

The Environmental Guidebook

OFFICE OF ENVIRONMENTAL QUALITY CONTROL

STATE OF HAWAII

A Guidebook for the Hawaii State Environmental Review Process

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This Guide is obsolete.
Use only for historical purposes.

This guidebook was prepared by the
Office of Environmental Quality Control
State of Hawaii

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(left to right)

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Acknowledgments

We would like to thank the many members of the public for giving us feedback over the years and helping us learn how to explain the environmental review system in understandable terms.



Linda Lingle, Governor

Chiyome Leinaala Fukino, Director of Health

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1. OVERVIEW

HAWAII'S ENVIRONMENTAL REVIEW PROCESS

Adopted in 1974 and patterned after the National Environmental Policy Act (NEPA) requirements, Hawaii's environmental impact statement law (HRS 343) requires the preparation of environmental assessments and environmental impact statements for many development projects. The law requires that government give systematic consideration to the environmental, social and economic consequences of proposed development projects prior to allowing construction to begin. The law also assures the public the right to participate in planning projects that may affect their community. The Office of Environmental Quality Control implements this law in Hawaii.

The Office of Environmental Quality Control is required by HRS 343 to publish a "periodic bulletin." This bulletin has been known in the past by various names: Environmental Quality Commission (EQC) Bulletin (1974-84) and the OEQC Bulletin (1984-96). Since 1996, it has been called *The Environmental Notice*. It includes notices of: determinations on the need for an EIS; acceptance or non-acceptance of EIS's; availability of documents for review and comments; documents, public comment processes or public hearings for habitat conservation plans, safe harbor agreements, or incidental take licenses under the federal Endangered Species Act.

If a proposed action is subject to the EIS law, the environmental review process begins with the development of a draft environmental assessment (EA). An EA is an informational document prepared by the proposing agency or the private applicant and used to evaluate the possible environmental effects of a proposed action. The environmental assessment must give a detailed description of the proposed action or project and evaluate direct, indirect and cumulative impacts. The document must consider alternatives to the proposed project and describe any measures proposed to minimize potential impacts. The public has 30 days to review and comment on a draft environmental assessment.

After the draft environmental assessment has been finalized and public comments responded to, the agency proposing or approving the action reviews the final assessment and determines if any "significant" environmental impacts are anticipated.

If the agency determines that the project will not have a significant environmental impact, it issues a finding of no significant impact (FONSI). This determination allows the project to proceed without further study. Within 30 days of the notice of this finding, the public may challenge an agency's determination by filing suit in circuit court.

If the agency determines that the action may have a significant impact, a more detailed environmental impact statement (EIS) be prepared. An EIS preparation notice is then issued and undergoes an additional 30-day comment period to define the scope of the draft EIS. Publication of an EIS preparation notice initiates a 60 day period during which an aggrieved party may challenge the determination in court.

An environmental impact statement assesses the proposed project through research, discussion and review. It must, at a minimum, identify environmental concerns, obtain various relevant data, conduct necessary studies, receive public input, evaluate alternatives, and propose measures for minimizing adverse impacts. The EIS must be structured to disclose information in a concise manner using understandable terms.

The EIS is prepared in both draft and final stages by the proposing agency or applicant. It is initially published as a draft EIS, and subjected to a 45 day review by the public and government agencies. After public comments are responded to, the draft is revised and submitted as the final EIS.

For agency actions, the accepting authority is the Governor or Mayor, who must determine the acceptability of a final EIS. For applicant actions, the approving agency determines the acceptability of a final EIS. After a final EIS is accepted, the action may be implemented. The publication in *The Environmental Notice* of an acceptance or non-acceptance determination by either the accepting authority or the approving agency initiates a 60-day legal challenge period (see Appendix E for details). Additionally, an applicant may administratively appeal a non-acceptance determination directly to the Environmental Council.

The accepting authority (the Governor, Mayor or Agency) must determine the acceptability of a final EIS. After a final EIS is accepted, the project may be constructed. The publication of either an acceptance or non-acceptance notice initiates a 60-day period during which an aggrieved party may challenge the determination by filing suit.

Every year in Hawaii hundreds of government and private proposals require an environmental review. Notice of these projects, studies and determinations are published twice each month by OEQC in *The Environmental Notice*.

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Project Proposed

Agency consultation and assessment

AGENCY DETERMINES PROJECT IS EXEMPT
or
HRS CHAPTER 343 NOT APPLICABLE

120-Day Legal Challenge Period

AGENCY EXPECTS SIGNIFICANT IMPACTS

AGENCY ANTICIPATES A FONSI

Begin Draft EA process

Agency/Applicant consult community, experts

Draft EA reviewed and accepted by agency

Draft EA submitted to OEQC

OEQC publishes notice of Draft EA

30-Day Comment Period

Agency/Applicant review comments

Begin Final EA process

Draft EA revised and finalized, comments answered

AGENCY ACCEPTS FINAL EA

Agency issues FONSI

Final EA and FONSI submitted to OEQC

OEQC publishes notice of Final EA and FONSI

30-Day Legal Challenge Period

Begin EIS Preparation Notice process

Agency/Applicant consults community, experts

EIS Prep Notice reviewed and accepted by agency

EIS Prep Notice submitted to OEQC

OEQC publishes notice of EIS Prep Notice

30-Day Comment Period

Agency/Applicant review comments

Begin Draft EIS process

Studies performed, comments answered

AGENCY ACCEPTS DRAFT EIS

Draft EIS submitted to OEQC

OEQC publishes notice of Draft EIS

45-Day Comment Period

Agency/Applicant review comments

Begin Final EIS process

Draft EIS revised, comments answered

Final EIS submitted to Agency

OEQC publishes availability of Final EIS

ACCEPTING AUTHORITY ACCEPTS FINAL EIS

OEQC publishes notice of acceptance

60-Day Legal Challenge Period

If Final EIS is deficient

ACCEPTING AUTHORITY REJECTS FEIS

OEQC publishes notice of non-acceptance

60-Day Appeal Period

If significant impacts are identified in the EA

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CHANGES TO THE EIS LAW

Changes to the EIS Rules became effective on August 31, 1996. They include new definitions, changes to certain exemptions, new requirements for draft EA content and distribution, and new and amended significance criteria. In 1997 the definition of Finding of No Significant Impact (FONSI) was added. In April 2000 Act 50 was enacted into law requiring an assessment of a project's impacts to traditional cultural practices. Appendix B, Changes to the EIS Rules, briefly lists the changes.

DEFINITION OF TERMS

This section defines terms the reader needs to know in order to understand Hawaii's environmental review process. Additional explanation of terms can be found in chapter 7 and in the EIS rules in Appendix I.

Triggers

Eight types of actions constitute the "triggers" of the environmental review law. Projects that propose the use of: state or county lands or funds; land in the conservation district; land in the shoreline setback area; any historic site or district; or land in Waikiki must be subject to an environmental review prior to its implementation. Also, any proposed reclassification of conservation land; amendment to a county general plan, and any new or expanded helicopter facility may trigger an environmental review.

Exemptions

Although a project may touch one of the above triggers, it does not necessarily require the preparation of an environmental review document. Certain classes of activities that are routine and minor in scope are exempt from the EA requirement. See Chapter 3 for more information on exemptions.

Applicant Actions

Applicant actions refer to those that are initiated by a private party and "trigger" an environmental review. A new resort development or residential subdivision on non-urban land are examples of applicant actions. The agency with the authority to grant approval of the project requires the applicant to prepare an environmental assessment prior to permitting its development.

Agency Actions

Agency actions are those proposed by a government agency. The agency proposing the action is responsible for preparing an environmental assessment, reviewing the document, submitting the document to OEQC for publication, and issuing a notice of determination on the need for an EIS.

Notice of Determination (FONSIs and Prep Notices)

A notice of determination is issued by an agency and accompanies a final environmental assessment. The determination states that the action will either have no significant impact, (a FONSI, Finding of No Significant Impact), or *may* have a significant impact. If a FONSI is issued, the project may proceed without further study. Without a FONSI determination, an agency must issue an Environmental Impact Statement Preparation Notice stating that a full EIS will be required.

Accepting Authority/Approving Agency

A final EIS must be accepted by a government entity before a project can proceed. The accepting authority for state agency actions is the governor. For county actions, the respective county mayor or designated department director must accept the EIS. Privately initiated EIS documents must be accepted by the government agency empowered to issue permits for the project.

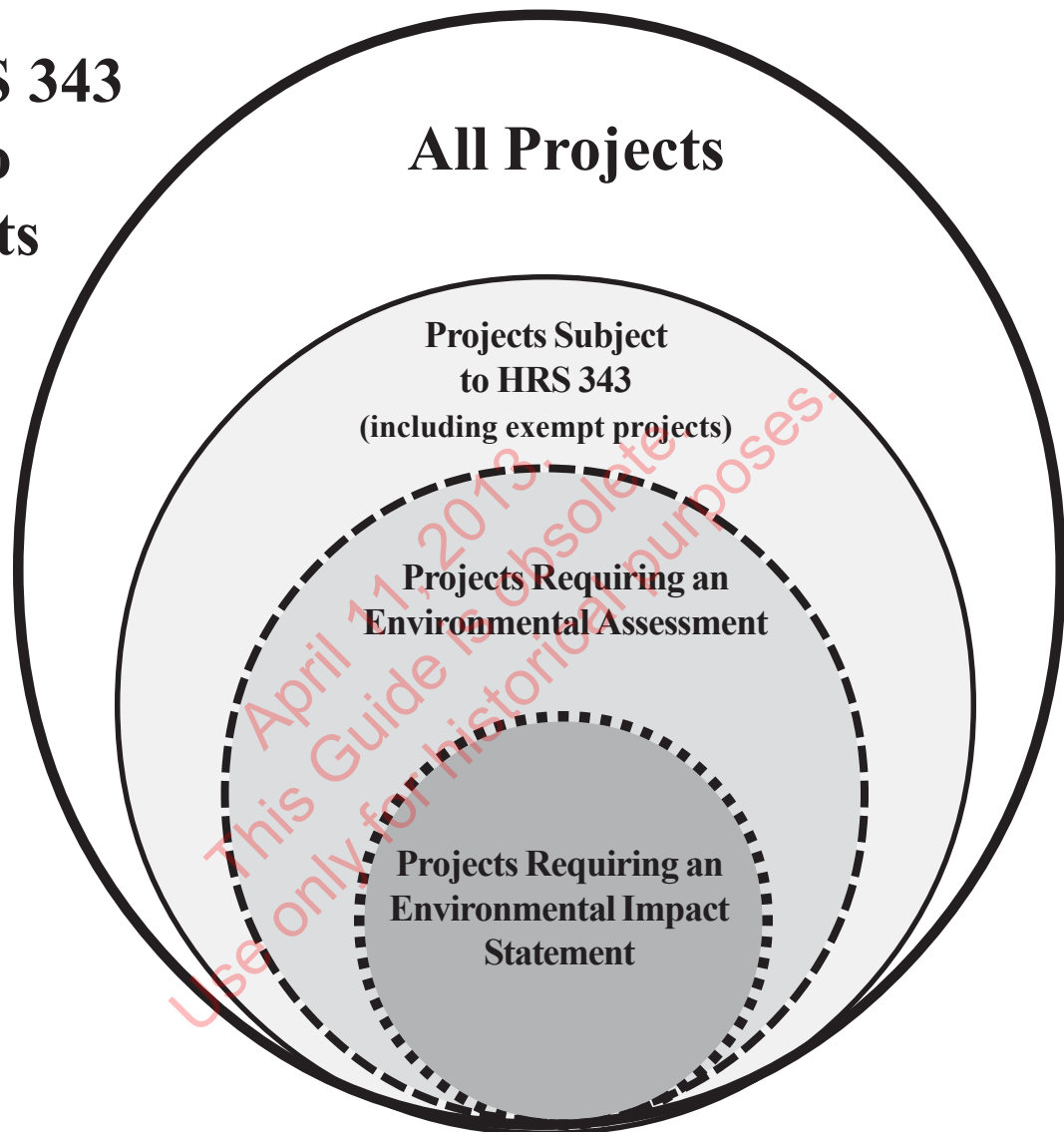
A final EA must be approved by the government agency with permitting power over the project. For agency action environmental assessments, the proposing and approving agency are one and the same.

The Office of Environmental Quality Control may advise government agencies on the acceptability of environmental review documents but does not have the final say.

Lead Agency

If an applicant simultaneously requests approvals from two or more agencies, only one agency will act as the lead agency. One environmental assessment will meet the requirements of both agencies, and both agencies will be involved in the preparation of the assessment and its determination. If these agencies are unable to agree as to which agency should be the accepting authority, OEQC will decide the lead agency.

How HRS 343 Applies to all Projects



2. PUBLIC PARTICIPATION

Public participation is an integral part of the EIS review process. There are three public participation periods provided in which citizens can become involved with a proposed action. The first is the public comment period on draft EAs for anticipated FONSI's. The second is the consultation period prior to the development of a draft EIS (the EISPN stage), and the third is the review period after the submittal of the draft EIS.

Because time limits for these periods are short, receipt of OEQC publication, *The Environmental Notice*, is vital if you are concerned about a particular project or any proposed projects within a particular neighborhood. The *Notice* can be obtained by calling OEQC at 586-4185 or by picking one up at the Office of Environmental Quality Control, 235 South Beretania Street, suite 702, Honolulu, Hawaii 96813. Call the Office to ask about receiving the *Notice* by mail. It is also available on OEQC's homepage.

OEQC is the legal repository of all environmental review documents (draft and final EAs, draft and final EISs). The public may request to borrow or examine any document which has been submitted to the Office. Comments letters received may also be examined.

At times proposed projects may generate considerable public interest. In these instances, agencies or applicants may hold public meetings to facilitate an exchange of information with the community. This is another excellent opportunity to participate and voice your concern. Public meetings are usually announced in the local newspapers. OEQC publishes notice of important public meetings whenever possible.

How You Can Participate

By becoming involved in the environmental review process, you can help to anticipate and avoid environmental problems.

- Watch the newspaper for projects coming up in your area; find out if an EIS is required.
- If an EIS is not required and you think one should be, find out why.
- Get on *The Environmental Notice* mailing list to find out about draft EAs, FONSI's, EIS preparation notices and EISs available for review.
- Request to be a consulted party for EISs for projects which concern you.
- Submit written comments on a draft EA or EIS

How to Review an EA or EIS

The basic purpose of an EA or EIS is to provide information to the public and decision makers on proposed actions. An EIS is not a self-serving recitation of the proposed action's benefits. It must provide complete and balanced analysis in a self-contained document capable of being understood by the reader without undue cross-reference. In reviewing an EIS, you may ask some of the following questions. Content checklists for draft and final EIS's are found in Appendix H.

- Is the project adequately described? Does the EIS enable you to fully understand what the project is all about?
- Is the surrounding environment adequately described? Are you able to understand how the project relates to its surroundings?
 - Are all the possible impacts adequately described? Is there any particular impact which is not discussed at all, or superficially discussed? Are there any assumptions which appear unreasonable? Is there adequate information in the EIS to support conclusions?
 - Are alternatives to the proposed project (including no project at all) adequately explored? Are there other ways to carry out the project which may be less damaging to the environment? Are different designs or approaches discussed sufficiently? What basic improvements can you suggest?

- What new data or information can you provide on possible environmental impacts or other alternatives which may lessen impacts? Residents often know local conditions from years of personal experience. This type of input can be very useful.

In submitting written comments:

- Be as specific as possible. Ask short, simple, direct questions you would like to see answered in the final EA or final EIS.
- Itemize your comments. Rather than lumping them together in long paragraphs, list each point separately.
- Be reasonable. Offer facts to support opinions.

30-Day draft EA Comment Period (for anticipated FONSI)

If you wish to comment on a proposed action, you must send an original copy of your comments to the agency. Also send copies of your comment letter to the applicant, the consultant and to OEQC. The agency or applicant must respond in writing to comment letters postmarked within the 30-day comment period. The agency must then prepare a final environmental assessment which includes copies of all comment letters and responses, and any necessary changes to the text or graphics of the document.

30-Day EIS Preparation Notice Consultation Period

If you wish to be consulted regarding a proposed action, that is, receive information on the project, you must send a written request to the proposing agency or applicant as listed in the EIS preparation notice within 30 days after its first publication in the *The Environmental Notice*.

The proposing agency or applicant will then send you a copy of the preparation notice and, if applicable, the EA. Within the 30-day comment period you must submit any written comments regarding the effects of the proposed action. This “consulted party status” allows you to inform preparers of the EIS of concerns you would like fully discussed in the EIS.

Applicants and proposing agencies must respond in writing to all substantive comments received during the preparation notice stage and include both comments and responses in the draft EIS.

45-Day Draft EIS Review Period

If you wish to submit comments for consideration on the draft EIS, you must write to the proposing agency or accepting authority as indicated in the *The Environmental Notice* within 45 days of the first publication date. Also send copies of your comment letter to the applicant, the consultant and to OEQC. Your comments will be responded to in writing and incorporated into the final EIS.

Litigation

The final avenue of participation is through initiating legal action to challenge one of the following situations:

- The failure of an agency to require the preparation of an environmental assessment;
- The improper determination that an EIS is or is not required for a project;
- The improper acceptance of a final EIS.

A full discussion of legal issues and their time frames can be found in Appendix E.

3. TRIGGERS AND EXEMPTIONS

Under the state’s environmental review law, all activities fall into one of four categories:

1. Those that do not require a Chapter 343 review;
2. Those that trigger Chapter 343 but are exempt;
3. Those that trigger Chapter 343 and require the preparation of an environmental assessment; and
4. Those that trigger Chapter 343 and require the preparation of an environmental impact statement.

Triggers

Every year hundreds of actions proposed by government or private applicants require the preparation of an environmental review. The environmental review is required under HRS 343 (the EIS law) for any program or project that proposes one or more of the following eight land uses or administrative acts.

1. Use of state or county lands or funds other than for feasibility studies or the purchase of raw land
2. Use of any land classified as Conservation District by state law
3. Use within the Shoreline Setback Area (usually 40 feet inland from the certified shoreline)
4. Use within any Historic Site or District as designated in the National or Hawaii Register of Historic Sites
5. Use within the Waikiki Special District as designated by the county
6. Any amendment to county general plans that would designate land as other than agriculture, conservation or preservation except comprehensive plan amendments initiated by the county
7. Reclassification of state Conservation District lands
8. Construction or modification of helicopter facilities which may affect conservation land, the shoreline area, or historic properties

Once an agency determines that an action “triggers” the EIS law, it must decide if the action is either:

- exempt from preparing a review document;
- will require a relatively brief review via an environmental assessment; or
- will require a full environmental impact statement.

Any program or project that triggers the EIS law must complete the environmental review process before final approval can be granted. The process requires that documentation disclosing environmental impacts be prepared and subjected to public review. The final environmental document must be “accepted” by an approving agency as verification that all requirements of the review process have been adequately fulfilled.

It should be noted that some private actions which may have significant environmental effects do not trigger the Chapter 343 review process. They may, however, be subject to an environmental review through other laws or permitting processes. See Appendix D, Related Environmental Review Laws.

Exemptions

Not every program or project falling within these eight categories will need to undergo an environmental review. Certain activities are deemed minor or routine by the state or county agency that has oversight. The agency can declare the activity *exempt* from environmental review. There are 10 classes of exempt action under the EIS rules.

The exempt classes of activities are as follows:

1. Operation, repairs, or maintenance of existing structures, facilities, equipment, or topographical features
2. Replacement or reconstruction of existing structures and facilities
3. Construction and location of single, new, small facilities or structures
4. Minor alterations in the conditions of land, water, or vegetation
5. Basic data collection, research and experimental management
6. Construction or placement of minor structures accessory to existing facilities
7. Interior alterations

8. Demolition of structures except historic structures
9. Zoning variances except shoreline setback variances
10. Continued administrative activities such as purchasing supplies and personnel related actions.

The agency must keep the memo declaring a project exempt on file and available for review by the public.

Examples of Exemptions

Here are some examples of actions usually declared exempt from environmental review. The exemption class is noted below in italics. See Appendix C for a complete list of exempt classes of actions.

- Equipment that is on state land (a trigger) requires an overhaul; this exemption represents *negligible or no expansion or change of use*.
- Replacement of a drainage culvert, paid for by county funds (a trigger) is considered *replacement of existing structures*
- In the conservation district (a trigger) a homeowner wishes to add a porch to his home; this is a *minor accessory structure to an existing facility*.
- The extension of utility lines across government lands (a trigger) to a single family home is exempt as an *essential public utility services extension to serve structures or facilities*. The *acquisition of utility easements* is also exempt.
- A state or county agency's purchase order for five cartons of paper clips using state or county funds (a trigger) is exempt as a *continuing administrative activity*.

Exemption Lists

Each state or county agency, after consultation with other agencies having expertise or jurisdiction, is responsible for preparing a list of agency specific actions it considers exempt. This *exemption list* is submitted to the Environmental Council, which reviews and concurs with it if appropriate. After an agency has an "approved" list, it can implement any action on the list without preparing an environmental assessment. The agency must keep a record of each exemption determination on file and available for review. Agency exemption lists are kept on file with the agency and at OEQC.

Exclusions to the Exemptions

In some cases, an action that would usually be considered exempt can still require an environmental review. If an exempt action is proposed in a particularly sensitive environment, or if successive exempt actions could have a cumulative significant impact, the exempt status of the action would be invalid. Environmentally sensitive areas include flood plains, wetlands, beaches and coastal areas, erosion-prone areas, geologically hazardous land, critical habitat and estuaries. See Appendix C, Exemptions.

4. PREPARING AN ENVIRONMENTAL ASSESSMENT

Overview of the Environmental Assessment Process

An environmental assessment (EA) is a single-volume document which is prepared for a proposed action that triggers the Environmental Impact Statement process. The information and analysis within an EA is used to determine if the impacts of a proposed action are significant enough to warrant the preparation of an Environmental Impact Statement. The eight triggers (conditions) that require the preparation of an EA are summarized in Chapter 3.

Which agency will submit the EA to OEQC?

All affected approving agencies should be involved in the preparation of the environmental assessment and in determining if an environmental impact statement is required. The agency which has the greatest responsibility for overseeing the proposed activity will be the agency that submits the EA to OEQC as the lead agency. This is generally the agency which will issue the major permit or approval. If more than one agency has an interest or responsibility, the one with the greater stake will be the submitting agency. If two agencies are involved and cannot decide among themselves which will be the submitting agency, OEQC is empowered to select a single lead agency to process an environmental review. This is to assure that a single document will meet the requirements of all the agencies involved in a project's approval.

Note that for an agency action (a government agency is proposing the project), the agency which submits the EA is also the agency which makes the determination. That is, the submitting agency is the same as the approving agency.

See Chapter 7 for a further clarification of terms.

Public Notification

OEQC publishes notice of draft EAs, final EAs, FONSI determinations, EIS Preparation Notices and draft and final EIS's, in *The Environmental Notice*. In addition, notices of the proposal or copies of the review document can be distributed directly to interested parties, those affected by the proposed activity and to those who specifically ask to be notified. The agency or applicant must also deposit at least one copy of the draft environmental assessment at the state library closest to the location of the proposed action.

Notice of a draft EA is published in *The Environmental Notice*. The date of this publication begins a 30-day public review period. At the end of the review period, the applicant prepares a final EA and submits it to OEQC through the approving agency along with a cover letter, bulletin publication form and four copies of the document. See the Submission Details section of this chapter for more information on this. See also the Preparing the final EA section.

Determinations and Challenges

An approving agency must submit a determination letter with the final environmental assessment either declaring a Finding of No Significant Impact (FONSI) or issuing an Environmental Impact Statement Preparation Notice (EISPN). If a FONSI is declared, the applicant may proceed with the project. The publication of a FONSI also initiates a 30-day period in which the determination may be challenged in court.

If the agency determines that the action may have a significant impact, an EISPN is issued. Publication of this determination in *The Environmental Notice* initiates a 30-day consultation period to define the scope of the draft EIS and collect public comments. During the 30-day period, reviewers may request "consulted party status." With this status they will receive additional information regarding a proposed project. Publication of the determination also initiates a 60-day period in which an aggrieved party may challenge in court the agency determination that an EIS is required.

Preparing an Environmental Assessment

Pay particular attention to the items in italics, as they are often omitted or done incorrectly.

Pre-assessment Consultation

Prior to preparing your draft EA it is important to *consult with the community regarding your proposed activity* as well as agencies. Groups, individuals and organizations that have expertise in the field, have an interest or will be affected by the activity you are proposing should be consulted. Immediate neighbors or neighboring landowners must be contacted. Consultation with the local planning department is required. The local planning staff can also direct you to other necessary agency contacts.

Agency Consultation

Project proponents should make a good-faith effort to contact interested parties. Here are some examples of agency consultation:

- If your project is located in the Conservation District, you will need to contact the Department of Land and Natural Resources (DLNR) and possibly the Na Ala Hele (Trails) program of DLNR;
- If your project is in a coastal area, you will need to contact the Department of Planning & Permitting on Oahu or, on a neighbor island, the county planning department for a Special Management Area Permit and a Shoreline Setback Variance; the Coastal Zone Management Program of the Department of Business and Economic Development and Tourism; and the U.S. Fish and Wildlife Service. A permit from the Army Corps of Engineers may also be required;
- If your project is in an historic district or near an historic site, you will need to consult with the State Historic Preservation Division of DLNR.

Community Consultation

Consultations with community or interest groups must not be neglected. In the examples listed above, the following contacts would be appropriate:

- In Conservation zoned sites, contact The Nature Conservancy, The Outdoor Circle, the Sierra Club and Hawaii's 1000 Friends;
- In coastal areas, contact the Sierra Club and UH's Sea Grant Program;
- In historic areas, contact the Historic Hawaii Foundation.

Depending on the nature of the activity proposed, certain agency consultations are required and must be documented in the EA. For more information, see Appendix F, agency descriptions.

Putting the Environmental Assessment Together

When reading your draft EA, the average citizen should be able to understand and have a clear mental snapshot of your project. Use straightforward language. Pictures and graphics also enhance understanding. Follow OEQC's draft EA checklist found in Appendix H. The items below are numbered to correspond with the checklist.

Pay particular attention to the items in italics, as they are often omitted or done incorrectly.

In a summary section include the following:

1. Identify the applicant or proposing agency
2. Identify the approving agency, if applicable
3. Describe the anticipated determination (is a FONSI anticipated?)
4. List individuals, community groups and agencies consulted. Copies of any correspondence should be appended to your draft EA.

Other helpful information which should be listed here includes:

- Tax map key numbers of affected properties
- Names of property owners and lessees
- Land use classifications; State designation, County general, community, development plans and zoning
- Special designations: Special Management Area, shoreline setback, historic site or facility listed on a state or federal register

In the body of the text include the following:

5. Describe the action's technical, economic, social, and environmental characteristics; time frame; funding and source.

- a. If a facility is planned, provide floor plans and a *photo or drawing* of its final appearance.
- b. Indicate anticipated start and end dates of the project.
- c. *Disclose the amount of any state or county funds involved, including federal or other funds administered by state or county agencies.*

6. Describe the affected environment and include appropriate maps. If the project is located in or near a sensitive environment discuss the impacts of the project on the area as well as mitigation measures planned to prevent, lessen or counteract these impacts. Sensitive areas include flood plains, tsunami zones, beaches, streams, rivers, ocean, estuaries, anchialine ponds, fresh or coastal waters, erosion-prone areas and geologically hazardous land. *Descriptions of flora, fauna, significant habitats, historical, archaeological and cultural sites. Impacts to sensitive habitats (such as a refuge) and their mitigation measures need to be discussed.*

Maps and graphics will help the reader visualize your project. *Location and site maps are required that show the island, the area of the project and the immediate neighborhood, each with the project site indicated.* Maps should always include a title, a north arrow and a scale.

7. *A cultural impacts assessment is required as of April 26, 2000. This is an analysis of impacts to cultural practices and resources, past and current. (See the appendix on Guidance Documents for a full explanation and helpful procedures to follow.)*

8. Impacts and mitigation measures

Impacts: Identify and summarize positive as well as negative major impacts. The impacts of concern are of the proposed action on the surrounding environment and community, not the impact of the environment on the action.

If certain types of impacts are not applicable, explain why rather than glossing over them. For example, discuss why certain impacts (such as those to threatened or endangered species or construction impacts on a nearby stream) are not present rather than not mentioning them at all.

Mitigation measures Describe proposed mitigation measures, if any. It is not sufficient to state that appropriate mitigation measures will be instituted whenever necessary. The potential problems must be identified and appropriate mitigation described. If a mitigation measure is identified, the corresponding impact should also be described. Best Management Practices should be described and employed whenever possible.

For mitigation at Historic Sites, the environmental assessment must include: 1) copies of the mitigation and/or preservation plans prepared for the Department of Land and Natural Resources' State Historic Preservation Program; and 2) a copy of the approval letter for the plans from the State Historic Preservation Program.

9. Consider alternative methods and modes of your project, and discuss them in the draft EA. Select the one with the least detrimental effect on the environment. Alternatives to consider include:

- Different sites: is one site less likely to infringe on an area that needs protection, such as a wetlands or an historic district?
- Different facility configurations: is one configuration less likely to intrude on scenic viewplanes?
- Different implementation methods: can a rocky area be cleared by backhoe removal rather than blasting?

Alternative analysis should include input from the community. Community members may be aware of concerns and impacts that make a particular alternative more or less desirable.

10. Significance Criteria: List the expected determination, either a Finding of No Significant Impact (FONSI) or the requirement to prepare an EIS. In anticipating a determination, the agency must consider every phase of a proposed action, the expected primary and secondary consequences, and the cumulative as well as the short and long-term effects of the action. The findings and reasons supporting the determination comprises an analysis of the project vis-a-vis the significance criteria. In most cases, an agency determines that an action may have a significant impact on the environment if it meets any of the following criteria:

- (1) Involves an irrevocable commitment to loss or destruction of any natural or cultural resource;
- (2) Curtails the range of beneficial uses of the environment;
- (3) Conflicts with the state's long-term environmental policies or goals and guidelines as expressed in Chapter 344, HRS, and any revisions thereof and amendments thereto, court decisions, or executive orders;
- (4) Substantially affects the economic or social welfare of the community or state;
- (5) Substantially affects public health;
- (6) Involves substantial secondary impacts, such as population changes or effects on public facilities;
- (7) Involves a substantial degradation of environmental quality;
- (8) Is individually limited but cumulatively has considerable effect upon the environment or involves a commitment for larger actions;
- (9) Substantially affects a rare, threatened, or endangered species, or its habitat;
- (10) Detrimentally affects air or water quality or ambient noise levels;
- (11) Affects or is likely to suffer damage by being located in an environmentally sensitive area such as a flood plain, tsunami zone, beach, erosion-prone area, geologically hazardous land, estuary, fresh water, or coastal waters;
- (12) Substantially affects scenic vistas and viewplanes identified in county or state plans or studies; or,
- (13) Requires substantial energy consumption.

It is not sufficient to simply state that a project does not have any significant impacts or to rephrase each criteria in its negative form. The EA should discuss the project impacts in relation to each of these criteria in detail.

11. In the draft EA list all permits, variances and approvals required and the status of each.

12. Document contacts made with community groups and agencies before preparing your draft EA and include any correspondence. The law requires that a good faith attempt be made to bring to light environmental concerns prior to the formal draft EA review period.

Preparing the final EA

The environmental assessment can be finalized at the end of the public comment period. The timeliness of comment letter is determined by the *date of the postmark*. You must allow several days past the published comment period deadline for letters to be delivered. Any new or better information due to public or agency comment is added to the document. New information could include changes to the text, figures, tables, maps and other ancillary parts of the study.

A final EA must include reproductions of all comment letters and responses and must also be accompanied by the notice of determination. The notice of determination (FONSI or EISPN), issued by the approving agency, is usually included in the submission letter. It must also list the following items:

- (1) Identification of applicant or proposing agency
- (2) Identification of approving agency
- (3) Brief description of proposed action
- (4) Determination
- (5) Reasons supporting the determination
- (6) Name, address and phone number of contact person for further information; and for EIS preparation notices only:
- (7) List of agencies to be consulted in the preparation of the EIS.

After reviewing comments received, the document writer must discuss findings and reasons that support the determination in consideration of the significance criteria listed above.

The final EA must discuss the project impacts in relation to each of these criteria in detail. It is not sufficient to simply state that a project does not have any significant impacts or to just restate each criteria in its negative form. Evidence justifying the determination that the proposed action will or will not result in any significant environmental impact must be included.

All comment letters received during the 30-day review period require a response addressed directly to the commenter. Copies of all comment letters and the responses to the letters must be included in the final EA. *This also includes a response to OEQC's comments.* Although some applicants prefer to answer all comment letters at the end of the review period, responses may be sent at any time. OEQC will publish notice of the determination only when all the required items are submitted for publication. See the section on Submission Details below.

Additional Guidelines

Avoid Project Segmentation

The proposed action must be described in its entirety and cannot be broken up into component parts which, if each is taken separately, may have minimal impact on the environment. Segmenting a project in this incremental way to avoid the preparation of an environmental impact statement is against the law. If a project includes a later phase that cannot be fully described in the current EA because it is only likely to be implemented in the distant future, the EA should disclose as much detail as possible about the future phase. Should the future phase of such a project eventually be proposed, a new environmental review document will be required at that time.

Submission Details

For a **draft EA**, complete the "OEQC Publication Form" which includes a brief (less than 300-word) description of the project. In addition, submit the project summary on a disk or by email to oeqc@mail.health.state.hi.us. Submit the review documents to the agency processing your request. The agency will then submit to OEQC an original cover letter along with four copies of the document, the OEQC Publication Form and the electronic version of the project summary, if it hasn't already been submitted. The letter must be on agency letterhead and signed by a responsible official. This letter will indicate the title of the project, the status of the document (draft EA) and the expected determination.

For a **final EA**, complete the "OEQC Publication Form," and submit it to the agency. The agency will then submit four copies of the document along with an original cover letter to OEQC. This cover letter serves as a formal declaration stating that the document has been reviewed and that the action either may have or will not have significant impacts on the environment. This must be the approving agency's — **not the consultant's** — determination. If no impacts are deemed significant, the agency declares a Finding of No Significant Impact (FONSI). If significant impacts are anticipated, the agency submits the final EA as an Environmental Impact Statement Preparation Notice (EISPN). See chapter 5 for details on preparation notices.

Note: if the project summary has not changed, then it's resubmission electronically is not required.

*Submit your items by the deadline found on OEQC's "Submission Deadlines" calendar. Late submissions will **NOT** be accepted.*

5. PREPARING AN ENVIRONMENTAL IMPACT STATEMENT PREPARATION NOTICE

Overview

An environmental impact statement preparation notice (“EISPN” or “prep notice”) must be written when it is known that an EIS will be prepared. There are two circumstances that lead to the publication of a prep notice.

First, an agency may have published an environmental assessment in anticipation of a finding of no significant impact, (FONSI). Upon review of the information collected during the EA process and in consideration of public comment, an agency may determine the need for a full EIS because the project may have significant effects after all. In this case, the document that was planned to be a Final EA is instead revised and printed as an EIS Prep Notice. The public is again invited to comment on the content of the forthcoming EIS.

Second, an agency may know from the beginning that a project is likely to have a significant effect on the environment and therefore decide to go straight to the EIS preparation process.

An EIS Preparation Notice is prepared following the content criteria and format for a Final EA.

The EISPN does not give full detail of the proposal but defines the scope of analysis that will be covered in the subsequent environmental impact statement. To prepare or review an EIS preparation notice, follow the provisions of Chapter 4 of this guidebook. (See also Chapter 3 for a discussion of the eight triggers (conditions) that require the preparation of an environmental assessment.)

Public Notification

The proposing agency or applicant must distribute copies of the EA (for the EISPN) to appropriate agencies, citizen groups and concerned citizens. Notice of an EISPN will then be published in *The Environmental Notice* until the public comment deadline has passed. The date of the first publication begins a 30 day public review period. After the review period, the applicant prepares a draft EIS and submits it to OEQC through the accepting authority along with a cover letter and four copies of the document. See the final EA section of Submission Details in the previous chapter.

Preparing Your Document

An EIS preparation notice is prepared following the content criteria and format for a final EA.

The EISPN does not give full detail of the proposal but defines the scope of analysis that will be covered in the subsequent environmental impact statement. To prepare or review an EIS preparation notice, follow the provisions of Chapter 4 of this guidebook. Please note the following distinctions between the format of an EA and EISPN.

- Any comments received during the comment period on an EIS preparation notice must be included in the draft EIS.
- Agencies that will be consulted during the drafting of the EIS must be listed in the preparation notice.
- If impacts to the environment are anticipated but are not yet fully known at the preparation notice stage, a listing of all the studies and/or research that will be performed in the draft EIS must be included.

6. ENVIRONMENTAL IMPACT STATEMENTS

The environmental impact statement (EIS) is a disclosure document that analyzes the effects of a proposed project or program on the environment. This in-depth study must provide mitigation measures to prevent or reduce the project's negative effects and must present alternative methods, modes or designs of the proposed action.

An EIS is preceded by an EIS preparation notice that undergoes a 30-day comment period. Next, the study is compiled and printed as a draft environmental impact statement. This draft EIS is circulated to public libraries and consulted parties with a 45-day public comment period. After comments have been received and answered, the draft EIS is finalized with updated information. The final document must be accepted by the accepting authority as complete and technically adequate before the proposed project can be implemented. At each step in this process, notice is published in OEQC's bulletin, *The Environmental Notice*.

The acceptance of an EIS may be challenged. Aggrieved parties have 60 days from notification of acceptance in *The Environmental Notice* to challenge the acceptability of the final document in court. The accepting authority for an EIS on proposed state actions is the governor, and for county actions, the mayor. For private applicant actions the accepting authority is a state or county agency with the power to grant discretionary permits on the project. See also chapter 7 for a fuller explanation of terms used. Note that acceptance of an EIS is **not** an endorsement of the project.

EIS Content Requirements

An Environmental Impact Statement must be written in plain language to allow public understanding of its content. The rules that govern the EIS process require that the statement contain at least the following elements.

- A concise summary and table of contents
- A statement of purpose for the project
- A detailed project description including maps, technical data, economic and cultural effects and historical perspective
- An analysis of alternatives to the proposed project and an explanation why the alternatives were rejected
- A description of the environmental setting
- A statement of the relationship of the proposed action to land use plans, policies and controls for the affected area
- A description of the probable impacts of the project including the direct, indirect and cumulative impacts, as well as impacts on both the natural and human environments
- A description of the relationship between short-term uses of environmental resources and long-term productivity (sustainability analysis)
- A statement of the unavoidable environmental impacts caused by the project and a rationale for proceeding with the project in light of these impacts
- A consideration of all mitigation measures proposed to avoid, minimize, rectify, or reduce the project's adverse impacts
- A summary of unresolved issues and a discussion of how such issues will be resolved
- A listing of all agencies, organizations and individuals consulted during the preparation of the document
- Reproduction of all substantive comments received during the study process and the responses to those comments

Statement Preparation

Because most authors of EIS documents are familiar with the content requirements, this chapter lists only those items which are often done incorrectly and need special attention. The items below are referenced by the OEQC checklist numbers assigned to them. See Appendix H for this checklist.

Draft EIS:

2. Summary sheet: be sure that all items on the summary sheet checklist appear (in abbreviated form) in this section. Any omissions will have to be corrected later.

4. Project description

Use of public funds or lands: If public funds are involved, including funds flowing through any state or county agency, the source and amount must be disclosed. If public lands are involved, this must be disclosed.

Historical perspective: Describe how the project evolved, including a brief historical perspective of its background.

5. Alternatives: After an evaluation and analysis of alternatives, the rationale must be given for the rejection of any alternatives.

6. Environmental setting

Local and regional perspective: Include in this section an historical overview of the region and the locality of the project site.

Rare or unique environmental resources: Besides historic and archeological resources, discuss those having cultural value (such as a heiau or sacred caves) or natural resources (such as forests, wetlands or important viewsheds).

7. Land use plans, policies, controls: in the list of necessary approvals, indicate application dates for all permits and approvals not yet processed.

8. Probable impacts: discuss direct, indirect and cumulative effects of *all* projects that are geographically related to the proposed project. Analyze impacts of the project on past *and present* cultural resources to comply with Act 50. The analysis includes other cultures in addition to the Native Hawaiian culture.

Final EIS:

4. Response letters: Responses must be made directly to authors of written comments and reproduced in the Comments/ Responses section. This includes letters, email and faxed comments.

5. Responses to comments: Verbatim changes to the DEIS text as a result of comments received must be included in response letters. When this is done, commenters need not receive a copy of the FEIS in order to verify that their comments have been taken into consideration.

6. Changes to text: Any changes to the text must be easily distinguishable. Any format where new text is clearly different from the original can be used, such as italics, bold, or shading, or new text printed side by side next to the original.

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7. MORE DEFINITIONS FOR EA, EISPN AND EIS PREPARERS

- If you're writing an environmental review document, is the agency submitting it to OEQC for processing the *accepting authority* or *approving agency*?
- When does the county planning department review an EIS for acceptability and when is it the agency that normally oversees the proposed activity?

The statute does not clearly define which terms to use in which situations. In looking at the overall review process you will find several definitions that apply to the proposers of actions, and several to the agencies that get to say "yes" or "no." This section clarifies these types of situations. You will find here a reiteration of definitions given in chapter *I. Overview*, which are taken from HRS 343-2 and HAR 11-200-2.

Environmental assessments

Proposers of actions:

Applicant action or agency action?: First determine whether the client is an "applicant" or an "agency":

Applicant actions are those proposed by private individuals or entities. This entity officially "requests approval for a proposed action."

Agency actions are those proposed by any government agency (county, city & county or state.) The definition includes "any department, office, board, or commission of the state or county government which is a part of the executive branch of that government."

Agencies that grant or deny a proposed action via permits or approvals:

Approving agency or accepting authority?

Approving agency: You see above that what the "applicant" (i.e., private entity) requests is an "approval." Therefore the government agency granting the approval is the "approving agency." This is normally the agency issuing the major permit, which has oversight over the proposed activity (or "action").

What about *accepting authority*? The law defines this as "the final official or agency that determines the acceptability of the EIS document." **There is no accepting authority in the EA process.**

For private entities, (i.e., applicant actions) the agency issuing the major permit is the approving agency. This is the agency that submits both the draft EA and the final EA to OEQC on behalf of the private applicant. In fact the law states that the agency prepares the EA, and may request the applicant to provide information in that preparation (§343-5 (c) and 11-200-9 (b)). Typically the applicant will write the EA, but the agency has full responsibility for its contents.

For agency actions, the same agency that submits the draft EA also makes the determination of either FONSI or the requirement for an EIS. This agency, also called the *proposing agency*, writes and submits the draft EA, circulates the document, responds to comment letters, then prepares the final EA and makes a final determination according to significance of the impacts, or lack of significance.

So in the case of EA reviews, a government agency will *approve* (or deny *approval*) of a proposed project and is therefore the *approving agency*.

Environmental impact statements

Proposers of actions: The same definitions that apply to EAs also apply to EISs. Private entities propose *applicant actions* and entities of the county or state government propose *agency actions*.

Accepting authority: As mentioned above, this is "the final official or agency that determines the acceptability of the EIS document." Which agency will act as accepting authority depends on whether the project is an applicant action or an agency action:

For private entities, (i.e., applicant actions) the accepting authority is the agency, either county or state, which would issue the major permit or normally have jurisdiction over the proposed activity. Keep in mind that acceptance applies only to the environmental review document: is it complete in terms of disclosure and does it meet all the legal requirements of an EIS? Acceptance of an FEIS does not automatically mean that the major permit will be issued or that the project will go forward.

Agency actions: If the proposing agency is at the county level, the mayor is the accepting authority. If the proposing agency is a state agency, the Governor is the accepting authority. In most cases, the mayor designates the local planning department to process the acceptance, and the Governor designates OEQC.

ENVIRONMENTAL ASSESSMENTS

Type of Applicant	Processing Agency	Terminology for Processing Agency
private entity	issuer of major permit	<i>approving agency</i>
govt. agency (also called "proposing agency")	same as applicant / a.k.a. "proposing agency"	<i>approving agency</i>

ENVIRONMENTAL IMPACT STATEMENTS

Type of Applicant	Processing Agency	Terminology for Processing Agency
private entity	issuer of major permit	<i>accepting authority</i>
govt. agency (also called proposing agency)	<u>County</u> : Mayor or county planning dept. as designate <u>State</u> : Governor or OEQC as designate	<i>accepting authority</i>

Other definitions are covered in Chapter 1, *Overview* and in Appendix I.

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Appendix A: ENVIRONMENTAL POLICY LAWS

A brief explanation of Hawaii's environmental review laws and rules is presented here:

A. Environmental Impact Statements, Chapter 343, Hawaii Revised Statutes

Adopted in 1974, and patterned after the National Environmental Policy Act, Chapter 343 provides the statutory basis for developing and processing environmental assessments and environmental impact statements. This EIS law requires that systematic consideration be given to the environmental and social consequences (in addition to the economic consequences) of proposed state, county, or private actions. OEQC is mandated to implement the provisions of Chapter 343, HRS.

B. Environmental Impact Statement Rules, Title 11, Chapter 200, Hawaii Administrative Rules, Department of Health

The administrative rules implementing Chapter 343, HRS, are contained in Title 11, Chapter 200. Chapter 200 prescribes whom the law applies to, how it is implemented, and what the specific requirements are, in a step-by-step format. These rules provide agencies and applicants with procedures, specifications, contents and criteria relating to environmental assessments and environmental impact statements.

C. Environmental Policy Act, Chapter 344, Hawaii Revised Statutes

Also adopted in 1974, Chapter 344 established Hawaii's State Environmental Policy to encourage the conservation of its natural resources and the enhancement of its quality of life. Specific policy guidelines are set forth in the law for implementation by state and county agencies in their planning and decision making.

D. Environmental Quality Control Act, Chapter 341, Hawaii Revised Statutes

Adopted in 1970, Chapter 341 created three new entities within the structure of state government to stimulate, expand, and coordinate efforts to maintain the quality of Hawaii's environment:

1. **The Environmental Center** of the University of Hawaii functions to stimulate, expand, and coordinate education, research, and service efforts of the University relating to ecology, natural resources, and environmental quality. The Environmental Center also reviews environmental assessments and impact statements and submits comments and suggestions when appropriate during the environmental review process.

2. **The Environmental Council** is comprised of 15 members appointed by the governor and confirmed by the legislature for a term of four years. The Council is responsible for the adoption, amendment and repeal of rules under Chapter 343. The council also hears appeals from applicants who wish to challenge the nonacceptance of an EIS. The Council serves as a liaison between the director of OEQC and the general public by soliciting information, opinions, complaints and recommendations concerning ecology and environmental quality. Monitoring agency progress in meeting state environmental goals and policies and publishing an annual report, with recommendations for enhancing the quality of Hawaii's environment, are part of the Environmental Council's duties.

3. The **Office of Environmental Quality Control** (OEQC) serves in an advisory capacity to the Governor on all matters relating to environmental quality control and is responsible for implementing various portions of Chapter 343. Under Chapter 341, the Director of OEQC is also responsible for directing the attention of the university community and the general public to environmental and ecological issues by funding research projects and providing environmental education; proposing and encouraging legislation to preserve and protect environmental resources; recommending long-range environmental programs; and offering advice to private citizens and governmental agencies on matters relating to environmental quality control. OEQC reviews all documents pursuant to the EIS process and informs the public of proposed actions through a semimonthly publication known as *The Environmental Notice*.

4. The **OEQC bulletin**, *The Environmental Notice*, lists the availability of Draft Environmental Assessments, Findings of No Significant Impact, Environmental Impact Statement Preparation Notices, Draft and Final Environmental Impact Statements and notices of acceptance. As a courtesy, it also lists announcements of environmental concern from other agencies. *The Environmental Notice* is published on the 8th and the 23rd of each month and is distributed throughout the state to libraries, government agencies, interested members of the public, consultants and community groups. It is currently sent to about 700 recipients.

The Environmental Notice

A SEMI-MONTHLY BULLETIN OF THE OFFICE OF ENVIRONMENTAL QUALITY CONTROL

The Environmental Notice is available through the U.S. mail service and on the internet. It is provided free of charge as a public service by the State of Hawaii.

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Appendix B: CHANGES TO THE LAW

Cultural impacts assessment: Act 50 was passed by the Legislature in April of 2000. This mandates inclusion of an assessment of impacts to local cultural practices by proposed projects undergoing an environmental review and amends the definitions of "environmental impact statement" and "significant effect." See Appendix G for guidelines to carrying out an assessment. See Appendix I for a copy of Act 50. See HAR §§11-200-2, 11-200-12, 11-200-17 (k) and (m); §343-2, Definitions (environmental impact statement, significant effect).

Since 1997 additional statutory changes were enacted into law (HRS 343). These include:

Procedures for informing the public of documents, public comment processes or public hearings for habitat conservation plans, safe harbor agreements, or incidental take licenses under the federal Endangered Species Act, by Act 380, Session Laws of Hawaii 1997, section 8.

Clarification of language by inserting the adjective "proposed" before the words "habitat conservation plan," "safe harbor agreement," and "incidental take license" with respect to notifying the public of the intent of the Board of Land and Natural Resources (Act 237, Session Laws of Hawaii, section 7); authorized by section 8, Act 380 (supra); see HRS 343-3(c)(2).

Waiahole Water System: The purchase of the assets from this System is exempt from the requirements of chapter 343 by Act 111, Session Laws of Hawaii 1998, section 4. See HRS 343-6.5.

Changes to the EIS Rules (HAR 11-200) became effective on August 31, 1996. These rules changes included new definitions, changes to the procedures for exemptions including reinstatement of the "continuing administrative actions" class, new requirements for draft environmental assessments, content, distribution and public review, and new and amended criteria for determining "significance."

New Definitions: Expanded or new definitions were added for the following: Cumulative impact; primary impact or primary effect; direct impact or direct effect; secondary impact or secondary effect; indirect impact or indirect effect; finding of no significant impact (FONSI). See HAR §§11-200-2 for these definitions.

Clarification of the County General Plan Trigger: County planning departments are no longer allowed an exemption from an environmental review for amendments to the county general plan, with certain exceptions. See HAR §§11-200-5 (e).

Exemptions: A wider scope of input during review and the keeping of open exemption records are now required by agencies declaring exemptions. See HAR §§11-200-8 (a) and (e).

Draft environmental assessment (DEA) preparation and distribution: EA preparers are now required to consult with the local planning department, and with citizen groups and government agencies having an interest or jurisdiction in the proposed project; and distribute the EA to the same entities. A copy of the draft EA must be placed in the public library closest to the project site. See HAR §§11-200-9 (a)(1) and §§11-200-9 (6) and (7).

EA Content: The environmental assessment must include a list of all permits and approvals (state, federal, county) required. See HAR 11-200-10 (11).

Final EA Notice of Determination: The final EA must include 6 items of basic information about the proposed action and reasons supporting the determination. See HAR §§11-200-11.2

New and Amended Significance Criteria: Three new and amended significance criteria deal with sensitive areas, viewplanes and the project's energy consumption. See HAR §§11-200-12.

Final EIS: Text changes to the draft EIS must be easily distinguishable in the final EIS. See HAR §§11-200-18 (5).

Appendix C: EXEMPTIONS

Once an agency determines that an action “triggers” the EIS law, it must decide if the action is either:

- exempt from preparing a review document;
- will require an relatively brief review via an environmental assessment;
- or will require a full environmental impact statement.

Minor Projects Should be Declared Exempt

Certain activities are deemed minor or routine by the state or county agency that has oversight. The agency can declare the activity exempt from environmental review. There are 10 classes of exempt action under the EIS rules. The exempt classes of actions, found in HAR §11-200-8, are listed here. Exceptions to exemptions follow the exemption classes:

"(a) . . .

- (1) Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing;
- (2) Replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced;
- (3) Construction and location of single, new, small facilities or structures and the alteration and modification of the same and installation of new, small, equipment and facilities and the alteration and modification of same, including, but not limited to:
 - (A) Single-family residences less than 3,500 square feet not in conjunction with the building of two or more such units;
 - (B) Multi-unit structures designed for not more than four dwelling units if not in conjunction with the building of two or more such structures;
 - (C) Stores, offices, and restaurants designed for total occupant load of 20 persons or less per structure, if not in conjunction with the building of two or more such structures; and
 - (D) Water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve such structures or facilities; accessory or appurtenant structures including garages, carports, patios, swimming pools, and fences; and, acquisition of utility easements;
- (4) Minor alterations in the conditions of land, water, or vegetation;
- (5) Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource;
- (6) Construction or placement of minor structures accessory to existing facilities;
- (7) Interior alterations involving things such as partitions, plumbing, and electrical conveyances;
- (8) Demolition of structures, except those structures located on any historic site as designated in the national register or Hawaii register as provided for in the National Historic Preservation Act of 1966, Public Law 89-665, 16 U.S.C. §470, as amended, or chapter 6E, HRS;
- (9) Zoning variances except shoreline setback variances; and
- (10) Continuing administrative activities including, but not limited to purchase of supplies and personnel-related actions.

(b) All exemptions under the classes in this section are inapplicable when the cumulative impact of planned successive actions in the same place, over time, is significant, or when an action that is normally insignificant in its impact on the environment may be significant in a particularly sensitive environment.

(c) Any agency, at any time, may request that a new exemption class be added, or that an existing one be amended or deleted. The request shall be submitted to the council, in writing, and contain detailed information to support the request as set forth in section 11-201-16, Environmental Council rules.

(d) Each agency, through time and experience, shall develop its own list of specific types of actions which fall within the exempt classes, as long as these lists are consistent with both the letter and intent expressed in these exempt classes and Chapter 343, HRS. These lists and any amendments to the lists shall be submitted to the council for review and concurrence. The lists shall be reviewed periodically by the council.

(e) Each agency shall maintain records of actions which it has found to be exempt from the requirements for preparation of an environmental assessment in Chapter 343, HRS, and each agency shall produce the records for review upon request.

(f) In the event the governor declares a state of emergency, the governor may exempt any affected program or action from complying with this chapter. "

The full text of HAR §11-200-8 can be found in Appendix I.

Appendix D: RELATED ENVIRONMENTAL LAWS

A. National Environmental Policy Act (NEPA) (HAR §11-200-25)

A proposed project or action that includes the use of federal lands or funds may require adherence to federal EIS regulations (NEPA) as well as State EIS law. When an action is subject to both the National Environmental Policy Act (NEPA) and the State EIS law, the following must be implemented:

- The proposing applicant or agency, upon discovering that its proposed action is subject to both laws, must notify the responsible federal agency, OEQC, and any agency with an interest in the action.
- OEQC and state and federal agencies must cooperate to the fullest extent possible to reduce duplication of the requirements. This cooperation must include, to the fullest extent possible, joint EIS's, concurrent public review, and concurrent processing. Where there are additional federal requirements, OEQC and state agencies must cooperate in fulfilling them so that one document complies with all applicable laws.
- The Final EIS must first be accepted by the Governor or the Mayor of the respective county, or an authorized representative; the EIS shall then be submitted to the appropriate federal agency.

B. Section 4(f) of the Federal Department of Transportation Act of 1966

Proposed roadways involving federal funding near such resources as **parks, recreational areas, wildlife refuges, historic sites, historic bridges and highways, archaeological resources, school playgrounds, recreational trails and bikeways**, can trigger a form of federal environmental review, distinct and separate from NEPA and Chapter 343, HRS, known as a 4(f) review. 4(f) is short for Section 4(f) of the Department of Transportation Act of 1966.¹ The 4(f) process involves preparation of documents which describe the proposed action, its need, the 4(f) resource, the present alternatives (including avoidance), the impacts, a discussion of mitigation measures, and a summary of coordination activities. To be brief, a 4(f) review is required if a proposed roadway will “constructively use” any of the above resources. Discussion of what constitutes “constructive use” is beyond the scope of this guidance document.

A well-known Hawai‘i 4(f) document on file with the Office is the 1982 Final Second Supplement to the Interstate Route H-3 Environmental Impact/4(f) Statement. This document was the result of extensive litigation and served as a joint NEPA/343/4(f) document.² There are instances where 4(f) may not apply. For example, 4(f) review for a 1993 proposal to place a new Maui Central Parkway proximal to the Maui Zoological and Botanical Gardens was deemed inapplicable by both the County of Maui and the Federal Highway Administration since “the proposed roadway is encompassed by the Maui Central Park master plan corridor.”³

In summary, the Honolulu Office of the Federal Highway Administration should be contacted to determine the applicability of a federal 4(f) document for any proposed roadway which involves federal funding and is situated close to any of the above areas or resources.

C. Army Corps of Engineers

- Section 10 of the Rivers and Harbors Act of 1899 prohibits unauthorized construction in navigable waters of the United States without permit from the Corps of Engineers.

¹The law was the result of litigation arising from a project through Brackenridge Park in San Antonio, Texas.

²U. S. Department of Transportation, Federal Highway Administration, and, State of Hawai‘i, Department of Transportation, Highways Division, *Interstate Route H-3, Halawa Interchange to Halekou Interchange, City and County of Honolulu, Final Second Supplement Environmental Impact/4(f) Statement (1982)*, FHWA-HI-EIS-82-01-F(S).

³August 17, 1995, letter of the Honorable Charles Jencks, Director of Public Works and Waste Management, County of Maui, to Gary Gill, Office of Environmental Quality Control regarding the draft environmental assessment for Maui Central Park Roadway Improvements.

- Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 prohibits transportation of dredged material for the purpose of dumping it into ocean waters without permit from the Army Corps of Engineers.
- Section 404 of the Clean Water Act (33 USC 1344) prohibits the discharge of dredged or fill material into waters of the United States without a permit from the Corps of Engineers.

Any person, firm or agency (including federal, state and local governmental agencies) planning to do work in the waters of the United States must obtain a permit from the U. S. Army Corps of Engineers.

Waters of the U.S. include ocean waters; coastal and inland waters, lakes, rivers, and streams that are navigable waters of the U.S., including adjacent wetlands; tributaries to navigable waters of the U.S., including adjacent wetlands (isolated wetlands); fishponds connected to navigable waters of the U. S.; all other waters of the U. S., such as lakes, rivers and streams that are not interstate waters of tributaries to navigable waters of the U. S. impoundments, perched wetlands and intermittent streams, where the District Engineer determines that regulation is required to protect interstate commerce and the aquatic environment.

Marshes, estuaries, swamps, inland and coastal shallows, certain unique pond systems, and other areas associated with coastal and inland waters of the U.S. are considered wetlands. The following types of activities in waters of the U.S. and wetlands may require a permit: construction of piers, wharves, bulkheads, pilings, marinas, docks, ramps, floats, mooring buoys and like structures; construction of wires and cables over the water and pipes, cables or tunnels under the water; dredging and excavation; any obstruction or alteration of navigable waters; depositing fill and dredged material; filling of wetlands adjacent or contiguous to waters of the U.S.; construction of riprap, revetments, groins, breakwaters and levees; and transportation of dredged material for dumping into ocean waters.

D. Hawaii Coastal Zone Management (Chapter 205A, HRS)

The CZM objectives and policies are administered by the State Office of Planning, which is part of the Department of Business, Economic Development and Tourism. Chapter 205A, HRS, mandates each county to establish special management areas (SMAs), and forty foot shoreline setbacks, within which permits are required for development. The counties are authorized to extend the shoreline setback beyond forty feet under certain circumstances, and permit development within twenty feet of the shoreline through the issuance of a variance approval. The Planning Commission on each island is the decision making authority for an SMA permit or shoreline setback variance, except for Oahu, where the authority rests with the City Council. Administrative support is provided by the respective county planning departments, except on Oahu where the Department of Land Utilization provides the necessary services.

Section 205A-26(2)(A) provides the guidelines authorities use to review development in the SMAs, approving only those that will not have any substantial adverse environmental or ecological effects, except when these adverse effects are minimized to the extent practicable and are clearly outweighed by public health, safety, or compelling public interests.

Proposed developments in SMAs must be assessed to determine significant environmental effects. For Maui and Hawaii counties, the applicant is required to provide information on the development's technical, economic, social, and environmental characteristics, similar to that found in EAs. The counties of Kauai and Honolulu (Oahu) have the option of requiring the preparation of an EIS.

All four counties permit an accepted EIS as part of the information needed to assess the proposed development. Kauai, Maui, and Hawaii counties utilize significance criteria, as do EISs, to determine whether there will be a significant effect on the SMA. On Oahu, the City and County of Honolulu, Department of Land Utilization utilizes the policies and objectives in Section 205A-2, HRS, and the City and County Ordinance 4529, Section 4 to determine whether an EIS is required. Upon completion of the assessment the Director will issue a determination of a finding of no significant impact (FONSI) or require the applicant to prepare an EIS.

E. State Department of Health Environmental Laws and Associated Administrative Rules

The following is a brief summary of environmental laws, associated administrative rules, and related federal laws administered by the Department of Health.

1. Environmental Response Law (HRS 128D)

Establishes an environmental response revolving fund from which funds are funded by the Department of Health (DOH) for response actions, including removal and remedial actions, when there has been a release of hazardous materials on the sea or land. Also gives the DOH authority to order responsible parties to respond to and remediate releases of hazardous materials. Funds may also be used to support county used oil recycling programs and to address concerns related to underground storage tanks and drinking water. Rules Promulgated Under This Statute: Chapter 11-451, "State Contingency Plan."

2. Department of Health (HRS 321)

This is the statute that gives the Department of Health broad authority to adopt most of its rules, especially those dealing with public health and safety.

Environmental Rules Promulgated Under This Statute:

- a. Chapter 11-5, "Environmentally-Related Illness and Injury Reporting"
- b. Chapter 11-62, "Wastewater Systems"

3. Litter Control (HRS 339)

Enables the Director of Health to establish a litter control program, by the establishment of rules, by encouraging volunteer local antilitter campaigns, and by conducting educational programs intended to instill the antilitter ethic. Rules Promulgated Under This Statute: Chapter 11-68, "Litter Control."

Federal Law: Solid Waste Disposal Act

4. Solid Waste (HRS 340A)

This is known as the "H-POWER" law. It set up certain requirements that enabled each county to establish resource recovery facilities.

5. Hawaii Law For Mandatory Certification of Private Cesspool Pumping Firms and Operating Personnel in Wastewater Treatment Plants (HRS 340B)

Establishes a board, upon whose recommendation the Director of Health certifies private cesspool pumping firms and operating personnel in wastewater treatment plants. Also this statute enables rules to be promulgated for certification purposes.

Rules Promulgated Under This Statute: Chapter 11-61, "Mandatory Certification of Operating Personnel in Wastewater Treatment Facilities."

Federal Law: Water Pollution Control Act

6. Safe Drinking Water (HRS 340E)

Enables the Director of Health to promulgate drinking water standards and regulations that will protect human health and welfare to the extent feasible, using technology, treatment techniques, and other means which are generally available, taking cost into consideration.

Also enables the Director of Health to establish an underground injection control program to control the injection of contaminants into an underground source of drinking water. Rules Promulgated Under This Statute:

- a. Chapter 11-19, "Emergency Plan For Safe Drinking Water."
- b. Chapter 11-20, "Rules Relating to Potable Water Systems."
- c. Chapter 11-21, "Cross-Connection and Backflow Control."
- d. Chapter 11-23, "Underground Injection Control."

Federal Law: Safe Drinking Water Act

7. Hawaii Law for Mandatory Certification of Operating Personnel In Water Treatment Plants (HRS 340F)

Sets up a classification system for all water treatment plants and a certification system for qualified individuals to operate water treatment plants. Establishes a Board of Certification which is placed, for administrative purposes, in the Department of Health (DOH). Rules Promulgated Under This Statute: Chapter 11-25, "Rules Relating to Certification of Operating Personnel in Water Treatment Plants."

Federal Law: Safe Drinking Water Act

8. AIR POLLUTION CONTROL (HRS 342B)

Enables the Director of Health to establish an air pollution control program to minimize the presence in the outdoor air of substances, in quantities and for durations, which may endanger human health or welfare, plant or animal life, or property throughout the state. This program includes rules, standards, and permits. Rules Promulgated Under This Statute:

- a. Chapter 11-59, "Ambient Air Quality Standards."
- b. Chapter 11-60.1, "Air Pollution Control."

Federal Law: Clean Air Act

9. HRS, Chapter 342C, OZONE LAYER PROTECTION

This statute was passed for the purpose of controlling the use of the ozone-depleting compounds, chlorofluorocarbons (CFCs) and halons. This statute bans the sale of any CFC refrigerant suitable for use in air conditioners or mobile air conditioners in containers that are smaller than fifteen pounds net. The statute also bans any portable fire extinguisher that contains a halon or other ozone-depleting compound.

Federal Law: Clean Air Act (This portion of the CAA has since been repealed)

10. HRS, Chapter 342D, WATER POLLUTION

Enables the Director of Health to establish a water pollution control program to prevent contamination of the physical, chemical, or biological properties of any state waters, including change in temperature, taste, color, turbidity, or odor through the use of rules, standards, and permit systems. It prohibits water pollution and requires self-reporting of violations. It also established the State Revolving Fund (SRF). This statute also enables the Director to establish a wastewater control program to control the disposal and treatment of liquid wastes, including domestic sewage. Rules Promulgated Under This Statute:

- a. Chapter 11-54, "Water Quality Standards."
- b. Chapter 11-55, "Water Pollution Control."
- c. Chapter 11-62, "Wastewater Systems."
- d. Chapter 11-65, "Water Pollution Control Revolving Fund."

Federal Law: Water Pollution Control Act

11. HRS, Chapter 342E, NONPOINT SOURCE POLLUTION MANAGEMENT AND CONTROL

Enables the Director of Health to establish a program to prevent the runoff of polluted water from all land areas, including agricultural and urban lands, especially after heavy rains, from reaching our lakes, streams, and coastal waters.

Federal Law:

- a. Coastal Zone Act Reauthorization Amendments.
- b. Water Pollution Control Act.

12. HRS, Chapter 342F, NOISE POLLUTION

Enables the Director of Health to establish a statewide program to prevent “excessive noise” from both vehicular sources and stationary sources, such as agricultural equipment, construction equipment, and industrial activities. This is accomplished by the establishment of maximum permissible sound levels, statewide rules, and a permit system. Rules Promulgated Under This Statute:

- a. Chapter 11-42, “Vehicular Noise Control For Oahu.”
- b. Chapter 11-46, “Community Noise Control.”

13. HRS, Chapter 342G, INTEGRATED SOLID WASTE MANAGEMENT

Established the Office of Solid Waste Management within the DOH. Established statewide goals to reduce solid waste by 25 % by January 1, 1995 and 50% by January 1, 2000 through source reduction, recycling, and bioconversion. Mandated that the State and each county prepare a solid waste management plan. Set a policy for all county and state agencies to give preference to the purchase of products made from recycled materials. Mandated the establishment of an office paper recovery program for all state and county agencies.

Federal Law: Solid Waste Disposal Act

14. HRS, Chapter 342H, SOLID WASTE POLLUTION

Enables the Director to prevent, control, and abate solid waste pollution in the State through the promulgation of rules and a permit system. The rules establish minimum standards governing the design, construction, installation, operation, and maintenance of solid waste disposal, recycling, reclamation, and transfer systems. Rules Promulgated Under This Chapter: Chapter 11-58.1, “Solid Waste Management Control.”

Federal Law: Solid Waste Disposal Act

15. HRS, Chapter 342I, SPECIAL WASTES RECYCLING

Requires the recycling of used lead-acid batteries and used motor vehicle tires. It also describes the procedures to carry out this recycling.

Federal Law: Solid Waste Disposal Act

16. HRS, Chapter 342J, HAZARDOUS WASTE

Enables the Director to establish a program to manage hazardous waste, including the systematic control over the generation, collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

This program gives priority to: 1) the provision of technical assistance to generators, 2) the establishment of a public education program, 3) the promotion of hazardous waste minimization, reduction, recycling, exchange, and treatment as the preferred methods of managing hazardous waste. Rules Promulgated Under This Statute: Chapters 11-260 to 266, 11-268, 11-270 to 271, 11-279 to 280, “Hazardous Waste.”

Federal Law: Solid Waste Disposal Act

17. HRS, Chapter 342L, UNDERGROUND STORAGE TANKS

Enables the Director to establish a program to regulate underground storage tanks and those regulated substances (including petroleum products) which are stored in such tanks in order to prevent the contamination of soil and groundwater from leaking tanks. This program regulates the installation and removal of underground storage tanks and the cleanup of contaminated soil and groundwater. Rules Being Proposed Under This Statute: Chapter 11-64, “Underground Storage Tanks.”

Federal Law: Solid Waste Disposal Act

18. HRS, Chapter 342N, USED OIL TRANSPORT, RECYCLING, AND DISPOSAL

Enables the Director to establish a program to promote and regulate the transportation, recycling, and disposal of used oil through the use of rules, a permit system, and mandatory recordkeeping, sampling, and testing requirements.

19. HRS, Chapter 342P, ASBESTOS

Enables the Director to establish a program to control and prevent asbestos pollution and to regulate asbestos abatement activities by: 1. Establishing emission standards, including an indoor, nonoccupational exposure standard; 2. Establishing a model accreditation program; and 3. Establishing standards and notification requirements for the demolition and renovation of facilities containing asbestos. Rules Being Proposed Under This Statute: a. Chapter 11-501, "Asbestos Requirements." b. Chapter 11-502, "Asbestos Containing Materials in Schools." c. Chapter 11-503, "Fees For Asbestos Removal." d. Chapter 11-504, "Asbestos Abatement Certification Program."

Federal Laws: a. Clean Air Act b. Toxic Substance Control Act, Subchapter II, "Asbestos Hazard Emergency Response Act (AHERA)." c. Toxic Substance Control Act, Subchapter II, AHERA, Model Accreditation Plan.

F. Conservation District Use Permit

For land uses in the Conservation District a permit is required for the placement of any solid material on the land if that material remains on the land for more than 14 days or if it causes a permanent change in the land area. A permit is also required for grading, removing, harvesting, dredging, mining or extraction of any material or any natural resource on the land. A permit is required for a subdivision of the land. A permit is required for construction, reconstruction, demolition or alteration of any structure, building or facility on the land.

Permit types:

- a. Board permits (Board of Land and Natural Resources, BLNR): for major land uses;
- b. Departmental permits: for other more minor land uses.

These two types of permits must be processed within 180 days from the date of acceptance of the application by the Department.

- c. Site plan approval: for small additions, alterations, certain types of research and other ancillary uses.

G. Land Use Law (HRS 205)

This law is administered by the Land Use Commission, which is a part of the Department of Business, Economic Development and Tourism. This law places all lands in the state into four districts: Urban, Agricultural, Rural, and Conservation. The Commission processes petitions for district boundary changes over 15 acres; for changes to the Conservation District, however, the Commission processes petitions for acreage of any size. They also process special permits within the Agricultural and Rural Districts for areas greater than 15 acres, and district boundary interpretations. In its district boundary amendment process, the Commission considers whether the proposed boundary change conforms to the Hawaii State Plan, the Commission district standards and various areas of state concern.

H. State Environmental Policy (HRS 344)

This establishes a state policy which will encourage productive and enjoyable harmony between people and their environment, promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of humanity, and enrich the understanding of the ecological systems and natural resources important to the people of Hawaii. It touches upon land, water, mineral, visual, air, and other natural resources; flora and fauna; parks, recreation, and open space; transportation; energy and the efficient use of energy resources; community life and housing; education and culture; and citizen participation. The policy applies to all state agencies.

Appendix E: LITIGATION AND TIME LIMITATIONS

For the purpose of bringing judicial action under the EIS law (HRS 343-7) a person or agency is determined by the courts to be an “aggrieved party.” This may be an applicant, an affected agency, the Environmental Council, or persons who provided written comments during the consultation or review periods of the environmental review process.

As an aggrieved party you may challenge a determination made during the environmental review process by filing suit in circuit court within the specific time limitations listed below. The litigation usually requires the services of an attorney. You may want to consider the resources of public interest law firms, environmental groups with legal resources or private lawyers acting *pro bono publico* (for the public good).

As an aggrieved party, you can initiate judicial proceedings to challenge any of the following actions in the environmental review process:

1. Lack of Assessment

If a proposed action applicable to the EIS law is undertaken or initiated without an environmental assessment or a formal determination on the requirement of an EIS, an aggrieved party has 120 days from the time the action was initiated to file suit in circuit court.

2. Finding of No Significant Impact (FONSI) Determination

If an agency determines that an EIS is not required, an aggrieved party has 30 days from the date of publication of the FONSI in *The Environmental Notice* to file suit in circuit court.

3. EIS Preparation Notice

If an agency decides that an EIS is required, an aggrieved party has 60 days from the date of publication of the EIS Preparation Notice in *The Environmental Notice* to file suit in circuit to challenge this requirement.

4. Acceptance of EIS

If an aggrieved party wishes to challenge the acceptance of an EIS, it has 60 days from the date of publication of the notice of acceptance in *The Environmental Notice* to file suit in circuit court.

April 11, 2013.
This Guide is obsolete.
Use only for historical purposes.

Appendix F: AGENCY DESCRIPTIONS

FEDERAL AGENCIES

U.S. Army Corps of Engineers

A Department of the Army permit from the U.S. Army Corps of Engineers, Honolulu Engineer District may be required for structures, work, or any discharge of dredged or fill material in waters of the U.S., and the transportation of dredged material by vessel for purposes of dumping in ocean waters. These waters include, among others, ocean waters; coastal and inland waters, lakes, rivers, and streams that are navigable waters of the U.S., including adjacent wetlands, tributaries and fishponds connected to navigable waters; and all other waters where the District Engineer determines that regulation is required to protect interstate commerce and the aquatic environment. Marshes, estuaries, swamps, inland and coastal shallows, certain unique pond systems, and other areas associated with coastal and inland waters of the U.S. are considered wetlands.

U.S. Coast Guard, USCG Shore Maintenance Detachment

The Coast Guard is the primary federal agency responsible for marine environmental protection on navigable waters of the United States, the contiguous zone and the high seas. Its overall objective is to maintain or improve the quality of the marine environment and to respond to environmental contaminants in the coastal area. In addition to the Coast Guard's well-known search-and-rescue mission, district vessels and aircraft also provide a wide range of services including the enforcement of the Fisheries Conservation and Management Act which establishes controlled fishing areas within 200 miles of the United States shores. In the Pacific Basin, Coast Guard vessels and aircraft not only patrol the waters around the Hawaiian Islands, but also Guam, Northern Mariana Islands, American Samoa, and other U.S. territories in the Pacific. Two high-endurance cutters also patrol the rich fishing grounds off the coast of Alaska. The Coast Guard is also the leading federal agency charged with the prevention of oil pollution of our waters. If an oil spill should occur, the Coast Guard coordinates cleanup efforts.

U.S. Environmental Protection Agency (EPA)

The Environmental Protection Agency's mission is to protect human health and the environment. The Agency implements federal laws designed to protect the environment and is responsible for the administration of ten comprehensive environmental protection laws: the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, the Comprehensive Environmental Response, Compensation, and Liability Act, the Resource Conservation and Recovery Act, the Federal Insecticide, Fungicide, and Rodenticide Act, the Toxic Substances Control Act, the Marine Protection, Research, and Sanctuaries Act, the Uranium Mill Tailings Radiation Control Act, and the Asbestos Hazard Emergency Response Act. The EPA also registers pesticides and regulates their use; sets tolerance levels for pesticides in food; sets environmental radiation protection standards; and sets standards for drinking water. EPA's priority programs include proper disposal of hazardous waste and toxic substances (e.g., asbestos and polychlorinated biphenyls); underground petroleum and chemical storage tanks; and the Title III program (Emergency Planning and Community Right-To-Know) which requires the State and local governments to develop contingency plans to respond to chemical spills and emergencies.

The US EPA Pacific Islands Contact Office (PICO) in Honolulu provides information on all EPA program areas. The information includes laws, regulations, guidance, technical manuals and other documents. The Office maintains a library of EPA documents for loan along with other general materials. The Office also serves as a point of contact with the Region 9 San Francisco office.

U.S. Department of Housing and Urban Development (HUD)

HUD performs environmental assessments on HUD-assisted housing projects and subdivisions and reviews Environmental Impact Statements initiated under the National Environmental Policy Act (NEPA) or Chapter 343, Hawaii Revised Statutes, when requested. HUD also monitors Community Development Block Grant grantees for their compliance with the National Environmental Policy Act, HUD standards, and other Federal authorities.

U.S. Department of Agriculture, Natural Resources Conservation Service

The Natural Resources Conservation Service (NRCS) provides technical assistance to land owners, land users, and government agencies, typically farmers and ranchers, to prepare resource management plans that incorporate conservation practices to preserve and sustain Hawaii's natural resources. NRCS also works with other county, state and federal agencies, and with Hawaii's 16 Soil and Water Conservation Districts to prevent soil erosion and water contamination, and to improve water quality and quantity, soil productivity, wetlands ecosystems, and wildlife habitats. NRCS, an agency of the U.S. Department of Agriculture, has offices on the Big Island, Maui, Molokai, Oahu, and Kauai and was formerly known as the Soil Conservation Service until 1994.

U.S. Department of the Interior, U.S. Fish and Wildlife Service, Ecological Services

The Service is responsible for the administration of the Endangered Species Act and activities covered under the Land and Water Resources Development Planning Program. These include: listing of endangered species; preparation of endangered species recovery plans; informal/formal consultation under Section 7 of the Endangered Species Act; review of Federal, State, and local permits and license applications, environmental assessments and impact statements, general plans and land use amendments, clearinghouse reviews, geothermal, OTEC, and hydropower proposals, water quality certification, Federal agency consistency certification reviews under Coastal Zone Management, protection of wetland habitats under the Farm Bill, environmental contaminant review of all projects, specific contaminant investigations, and Natural Resource Damage Assessments; providing technical assistance to government agencies regarding fish and wildlife resource study methods and design (including Instream Flow Incremental Methodology).

U.S. Geological Survey, Biological Resources Division, Pacific Island Ecosystems Research Center (PIERC)

PIERC provides objective research, baseline information, and technical assistance relating to conservation of indigenous biological resources occurring within the cultural, sociological, political and environmental environs of all lands and islands under US jurisdiction in the Pacific Basin. PIERC research results in the development of management and recovery strategies aimed at conserving the biota and island ecosystems. Hawaii is the major research area because it is known as the "endangered species capitol" of the US, carrying 26% (267) of endemic plant species and 75% (30) of endemic bird species. New research has just begun on invertebrate and aquatic species.

STATE AGENCIES

Department of Land and Natural Resources, Land Division

- Office of Conservation & Coastal Lands

The Department of Land and Natural Resources is responsible for all conservation zoned lands in the State. The Planning Branch administers the Conservation District Use Application (CDUA) process, coordinates environmental reviews, and assists in the development of natural resources management programs on behalf of the Department.

- Engineering Division

This division administers the State's programs in water resource management, mineral resources assessment, flood prevention and control, and water development.

- Land Management Division

This division is directly responsible for State-owned lands that are not set aside for use by other government agencies and makes these lands available to the public through fee sales, leases, licenses, grant of easements, right-of-entries, month-to-month tenancies or kept as open space areas. The division also maintains a comprehensive inventory of all State-owned lands, serves as an office of record and maintains a central repository of all government documents dating back to the Great Mahele of 1848.

Department of Land and Natural Resources, Aquatic Resources Division

The Division provides for pelagic, reef, and inshore aquatic resources protection and enhancement programs. Its functions include conducting underwater surveys to manage areas designated as sanctuaries or for fisheries management, informing the public about aquatic resources protection, management and enhancement programs, investigating fish kills in coordination with the Department of Health, and coordinating and disseminating information relative to aquatic resources concerns.

Department of Land and Natural Resources, Forestry & Wildlife Division

This division is responsible for wild-land recreational programs on forest reserves, public hunting areas, wildlife sanctuaries; commercial forestry on State lands; endangered species protection and management; and providing informational materials on natural resources.

Department of Transportation, Statewide Transportation Planning Office (STPO)

The STPO is responsible for establishing a comprehensive, multi-modal statewide transportation planning process; for developing a balanced, multi-modal statewide transportation plan; and for providing technical assistance to the counties in fulfilling their component roles in the process.

The STP Office coordinates intergovernmental, and intra- and inter-departmental activities related to transportation planning. This includes securing the necessary endorsements and approvals, integrating established plans and parameters, and establishing the ground work for the implementation of the transportation plan. The latter involves intergovernmental agreements on systems and jurisdictional designation; recommending conditions of land use development for exactions and to reserve required rights-of-way, and providing the necessary technical support and data and transition the project from conceptual planning to project development.

Environmental Center (University of Hawaii)

The Environmental Center was established at the University of Hawaii in 1970 by the legislature under the State Environmental Quality Control Act (Hawaii Revised Statutes, Chapter 341). The environmental education function of the Center includes advising the University's Liberal Studies Program on appropriate curricula for students seeking BA's in Liberal Studies with environmental emphases or an Environmental Studies Certificate, as well as counseling students in these programs. The Center also assists in placing students in environmental internships. The research functions of the Center include the organization and coordination of multi-disciplinary environmental research projects, and the management of environmental research projects by the Center staff in areas of their special competence. The service functions of the Center include the reviews of environmental impact statements, applications for various environmental pollution management permits, proposed environmental legislation and regulations, and various State and Federal plans which may have environmental implications for the State of Hawaii. In all of its review and research activities, the Center relies on the expertise of various members of the University system for guidance.

Department of Health

- Environmental Planning Office

The Environmental Planning Office provides short- and long-term planning services for all programs under the Deputy Director of Environmental Health, maintains environmental plans, land use, environmental education, and public information programs for the Department, and functions as a point of contact for the Department of Health.

Hawaii Community Development Authority

HCDA is empowered with comprehensive planning, development, and financing authority to implement a range of programs to revitalize Kakaako. HCDA addresses the range of issues and concerns associated with the redevelopment of a major community which traditionally has been the responsibility of multiple agencies. It has adopted the Kakaako Community Development District Plan, which regulates both public and private development activities in the revitalization of Kakaako.

Department of Business, Economic Development and Tourism

- Land Use Commission

The Land Use Commission is a quasi-judicial body appointed by the Governor to carry out the provisions of the State land use law which places all lands in the State into four districts: Urban, Agricultural, Rural, and Conservation. The Commission's primary functions are to process petitions for district boundary changes over 15 acres; for changes to the Conservation District, however, the Commission processes petitions for any size area. They also process special permits within the Agricultural and Rural Districts for areas greater than 15 acres, and district boundary interpretations.

In its district boundary amendment process, the Commission is required by law (Chapter 205, HRS) to consider whether the proposed boundary change conforms to the Hawaii State Plan, the Commission district standards and various areas of State concern.

- Office of Planning

a. Coastal Zone Management Program

Coastal Zone Management (CZM) is concerned with creating a balance between environmental and economic concerns. The CZM objectives and policies are binding on all State and county agencies. The CZM program, therefore, studies coastal issues, develops and improves coastal regulatory programs, and monitors state and county agencies' actions to assure consistency and compliance. The program also administers the Federal consistency review whenever Federal actions can impact the State's coastal zone. A permit information service is provided to help interested people better understand the regulatory systems applicable to land and water uses. For those involved in projects requiring numerous multi-government permits, a consolidated application process is also offered.

b. Land Use Division

The Land Use Division is responsible for implementing the land use policies of the State of Hawaii.

State Historic Preservation Division (Department of Land and Natural Resources)

The State Historic Preservation Division is charged with the implementation of the National Historic Preservation Act of 1966, as amended, and Chapter 6E, Hawaii Revised Statutes. It reviews proposed development and land use projects for any effects they might have on historic properties. It maintains a statewide inventory of properties of historical, architectural or cultural importance and coordinates the Burial Sites Program and Historic Preserves Program. Any unearthing of human remains must be reported to this office.

COUNTY AGENCIES

Department of Planning and Permitting, City & County of Honolulu

Department of Planning and Permitting (DPP) processes a wide range of land use permits and applications including: zoning changes, conditional use permits, shoreline management permits, subdivision applications, variances, State special use permits, planned development and cluster applications, site plan review and special district applications. The Department conducts environmental assessments of project proposals which require DPP permits, and administers the Coastal Zone Management Program for the City and County of Honolulu. It advises the Planning Commission and the City Council as required.

The Planning Division is responsible for preparing and revising the General Plan and Development Plans of the City and County of Honolulu. The General Plan sets forth the objectives and policies for long-range development of the City and County of Honolulu. The Development Plans, covering eight geographical sub-regions, are relatively detailed, parcel-specific schemes for implementing the development objectives and policies of the General Plan. In response to 1992 City Charter amendments to change the Development Plans from relatively detailed schemes to more conceptual plans, the Planning Department began a comprehensive revision program of the Development Plans in 1993. Currently, Development Plans consist of detailed text and maps including Common Provisions, Special Provisions, Land Use and Public Facilities Maps. When completed and adopted by the City Council, the Development Plans will be self-contained conceptual plans offering a long-term vision with land use guidelines and policies on how this vision can be achieved.

Maui Planning Department and Planning Commission

The Maui Planning Department is responsible for virtually all county land use-related permits. This includes the review and processing of General Plan and zoning land use changes as well as variances, use, and zoning permits. Shoreline setback variances, Special Management Area permits and subdivisions are also responsibilities of the Planning Department.

Kauai Planning Department and Planning Commission

The Kauai Planning Department is responsible for most county land-use related permits involving subdivision, variances, use, zoning, shoreline setback variances, special management area permits. General Plan and zoning changes are processed through the Planning Department and Planning Commission as the recommending bodies with the County Council as the final decision-making authority.

Hawaii Planning Department and Planning Commission

The Planning Department provides technical advice to the Mayor, Planning Commission and County Council on all planning and related matters. It serves the public by enforcing the State Land Use Law, administering and enforcing the subdivision and zoning codes of the County, enforcing the shoreline setback variance and special management area requirements, and handling amendments to the county general plan.

April 11, 2013.
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Biological Surveys, Ecosystem Impact Analysis and Mitigation Measures

Introduction:

Hawai‘i State law calls for efforts to prevent or eliminate damage to the environment and biosphere and the protection of endangered species and indigenous plants and animals. To meet this goal, special care must be taken to assess a proposed project’s impact on biological resources.

The purpose of the state’s environmental review law is to encourage full, accurate and complete analysis of proposed actions, promote public participation and support enlightened decision making by public officials. To assist agencies and applicants in meeting this legal purpose, the office of Environmental Quality Control offers the following guidelines for preparers of environmental reviews under the authority of HRS 343.

These guidelines do not constitute rules or law. They have been refined by staff, student interns and peer review to provide a helpful checklist of items that will assist planners in preparing an adequate biological survey.

An Environmental Assessment or Impact Statement for a project that may affect biological resources should contain a biological survey that considers the items and issues described below.

Part I. Biological Surveys: Methods and Content

Survey Method

Timing

Surveyors should take into account the activities of nocturnal, migratory and seasonal species and conduct surveys accordingly. (e.g. a survey of wetland flora should take place during the rainy season to observe otherwise dormant species.)

Route and Coverage

A thorough flora/fauna survey, should provide the following:

a map containing the survey routes

a minimum of 50% coverage of the study area (although smaller areas may merit a larger percentage of study coverage)

the areas covered must include a composite of all terrain present (i.e., ridge tops, wetland, slope, riparian habitat etc.)

accounting for native invertebrate populations may be accomplished by estimating the coverage of host flora.

Adjacent Streams

Stream conditions both up and down-stream from a survey site should be assessed. The Hawaiian Stream Bio-assessment Protocol (HSBP) developed by the Environmental Planning Office of the Department of Health may be utilized in studying habitat and biotic quality of streams.

The Hawai‘i Stream Assessment produced by the Commission on Water Resource Management (CWRM) should also be consulted to identify waterways that qualify as a “heritage” streams. Investigators should also consider CWRM’s Stream Protection and Management (SPAM) system administrative rules and consult with DLNR’s Division of Aquatic Resources.

Literature Search

Literature and database sources should be searched for historical sightings of significant biological resources. Consult sources such as the **Manual of the Flowering Plants of Hawaii**, the Bishop Museum, The Nature Conservancy’s Hawaii Heritage Program Database listings, the U.S. Fish and Wildlife Service, the National Biological service, the State Department of Land and Natural Resources Division of Forestry and Wildlife and Natural Area Reserve Commission, the University of Hawaii botany, zoology and geography departments and the Audubon Society.

On-island experts should be contacted for information on historical sightings of significant species which may not be present during the survey (e.g., migratory water birds, ephemeral plants).

Ecosystem Characterization

Description

A description of the ecosystem should include the following:

an analysis of principal community types including both native and non-native organisms and the biological values of these community types

note the presence and condition of plant and animal communities based on elevation, moisture, substrate, topography and physiography (examples include: coastal dry shrublands; montane wet forests; seasonal or perennial wetlands and streams; anchialine pools; aeolian lava flow systems; and subterranean cave ecosystems)

a description of any obligate species (those requiring specific niches)

a list any applicable global ranks (established by the Nature Conservancy), describe species density (frequency of sightings or rate of occurrences), historical and current ranges and the location of notable species

Native Intactness

Analyze habitat intactness based on species composition. Assess the native bio-diversity of the project site based on alien-to-native species proportions and distributions and the presence of indicator species for a given ecosystem. Indicator species should be considered to identify potentially high quality ecosystems. For example, the presence of 'o'opu, or native goby species, (*Lentipes concolor*, *Awaous stamineus*, *Sicyopterus stimpsoni*), as well as hihiwai (*Neritina granosa*) in streams indicate unaltered stream conditions necessary for their survival.

Listed Species

Any rare, threatened and endangered species and their habitats should be listed and described. Indicate the presence and distribution of the following taxonomic groups:

species listed as either endangered or threatened by the state or federal government or both

species that are proposed or candidates to be listed as either endangered or threatened by the state or federal government or both

species of concern as determined by the U.S. Fish and Wildlife Service (those which appear or are suspected to be declining and may eventually fall under one of the categories listed above)

those species noted as rare or vulnerable by authorities on the specific taxa and not necessarily recognized by the State or Federal Endangered Species Act (such as insects)

In addition, note whether the habitat type is part of critical or essential habitat for the taxa listed above and restricted to the project area.

Resource Values

Note any historical and/or cultural importance related to the species or habitat. Also describe any economic, scientific, medicinal or recreational value related to the species or habitat. Non-

governmental organizations, local community associations, oral histories, Hawaiian language texts, kupuna and recreational users can be consulted to obtain this information. The book, **Valued Economic Ecosystem Components** by Gordon Orian, identifies various resource economic indices that may be of assistance in this analysis.

3. Shelf life of biological surveys

If the biological survey for a given site is older than 5 years it should be updated. A new "walk through" of the site should be performed at a minimum. Project proponents should also consult with area experts to determine if any changes have occurred since the area was last surveyed.

Part II. Ecosystem Impact Analysis

Consistency with existing land use policy

The EA should include a full discussion of how the proposed action corresponds to existing county and state land use requirements, goals and objectives related to conservation. The analysis should relate to the following:

- State and county zoning
- County General Plans
- State Plan
- State Environmental Policy (HRS 344)
- Habitat fragmentation and encroachment assessment

Determine whether the proposed action reduces the principal community types which are located on the given site and are part of the larger ecological community outside the project area.

For example, if the project alters native forest that occupies 10% of the project area, but represents 50% of that forest type remaining in the district, then the impact analysis should cover both the reduction of vegetation in the immediate project area and in the district as a whole.

Identify and assess areas that are generally intolerant to change such as wetland habitat, dryland forests and coral reefs. Analyze potential impacts resulting from catastrophic events (e.g. hurricanes, fires and landslides) in addition to the project impacts. Consider this cumulative impact on the survival of any species.

Noise impacts on the area should also be considered.

Alien species importation

Indicate whether and how the proposed action increases the potential for alien species dispersal that may affect native species. For example, if temporary access roads/corridors are to be built through pristine forest for construction in a disturbed area, discuss how the construction of access roads could increase alien plant dispersal. Encroachment of exotic grasses that increase the area's fire hazard can also be a concern.

4. Cultural impact analysis

Discuss potential impacts to the cultural use of biological resources. The analysis should relate to native gathering and other traditional subsistence practices (e.g., fishing, aquaculture) as well as current cultural activities (e.g., commercial, scientific, recreational, educational).

5. Impacts on Streams and Coastal Waters

A project's impact on streams, rivers and coastal waters should be assessed. A project that alters streams could impact upon the following:

- wetlands, estuaries and fisheries
- native species, food sources, water quality, temperature and nutrient load
- reduction in flow leading to increased predation or competition from alien species
- siltation or contamination of habitat from run-off
- ground water resources or agricultural uses

Part III. Proposed mitigation measures

1. Vegetation alteration

If the proposed action reduces and/or alters existing vegetation, mitigation measures may include the following:

- incremental clearing of project site to reduce erosion and siltation
- concurrent application of geotextiles or other proven techniques in erosion-prone areas
- revegetation with native species

Alien species introduction and establishment

If the project is shown to increase the potential for alien species importation, then mitigation should include the cleaning of gear, equipment and clothing before, during and after the project is completed.

3. Ecosystem-wide and species-specific management of significant biological resources

If the project potentially impacts significant biological resources, mitigation of impacts should go beyond mere avoidance of the resources. The EA should consider direct management and/or protection of sensitive species and their supporting ecosystems, to include the following:

- ecosystem protection planning: designation of heavy impact activities to areas within the project that can sustain them (e.g., previously degraded areas)
- habitat enhancement: selective weeding, native species outplanting
- subsequent monitoring: engage foresters and/or biologists to monitor effects of actions over time and direct additional management actions as needed

Project design

To reduce or mitigate a project's impacts, it may be appropriate to integrate the following components into its design:

- buffer zones to protect fragile areas
- walkways or boardwalks to protect sensitive areas
- native landscaping appropriate to the area
- detention and retention basins to control run-off
- vegetated rather than channelized stream banks

Alternative analysis

To direct harmful development away from sensitive native ecosystems, the project proponent should consider employing conservation techniques such as land exchanges, conservation easements, and management agreements with non-profit organizations. The Trust for Public Land and the Nature Conservancy, among other organizations, may provide technical assistance with developing these options.

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Guidelines for Assessing Cultural Impacts

*Adopted by the Environmental Council, State of Hawaii
November 19, 1997*

I. INTRODUCTION

It is the policy of the State of Hawaii under Chapter 343, HRS, to alert decision makers, through the environmental assessment process, about significant environmental effects which may result from the implementation of certain actions. An environmental assessment of cultural impacts gathers information about cultural practices and cultural features that may be affected by actions subject to Chapter 343, and promotes responsible decision making.

Articles IX and XII of the State Constitution, other state laws, and the courts of the state require government agencies to promote and preserve cultural beliefs, practices, and resources of native Hawaiians and other ethnic groups. Chapter 343 also requires environmental assessment of cultural resources, in determining the significance of a proposed project.

The Environmental Council encourages preparers of environmental assessments and environmental impact statements to analyze the impact of a proposed action on cultural practices and features associated with the project area. The Council provides the following methodology and content protocol as guidance for any assessment of a project that may significantly affect cultural resources.

II. CULTURAL IMPACT ASSESSMENT METHODOLOGY

Cultural impacts differ from other types of impacts assessed in environmental assessments or environmental impact statements. A cultural impact assessment includes information relating to the practices and beliefs of a particular cultural or ethnic group or groups.

Such information may be obtained through scoping, community meetings, ethnographic interviews and oral histories. Information provided by knowledgeable informants, including traditional cultural practitioners, can be applied to the analysis of cultural impacts in conjunction with information concerning cultural practices and features obtained through consultation and from documentary research.

In scoping the cultural portion of an environmental assessment, the geographical extent of the inquiry should, in most instances, be greater than the area over which the proposed action will take place. This is to ensure that cultural practices which may not occur within the boundaries of the project area, but which may nonetheless be affected, are included in the assessment. Thus, for example, a proposed action that may not physically alter gathering practices, but may affect access to gathering areas would be included in the assessment. An ahupua'a is usually the appropriate geographical unit to begin an assessment of cultural impacts of a proposed action, particularly if it includes all of the types of cultural practices associated with the project area. In some cases, cultural practices are likely to extend beyond the ahupua'a and the geographical extent of the study area should take into account those cultural practices.

The historical period studied in a cultural impact assessment should commence with the initial presence in the area of the particular group whose cultural practices and features are being assessed. The types of cultural practices and beliefs subject to assessment may include subsistence, commercial, residential, agricultural, access-related, recreational, and religious and spiritual customs.

The types of cultural resources subject to assessment may include traditional cultural properties or other types of historic sites, both man made and natural, including submerged cultural resources, which support such cultural practices and beliefs.

If the subject area is in a developed urban setting, cultural impacts must still be assessed. Many incorrectly assume that the presence of urban infrastructure effectively precludes consideration of current cultural factors. For example, persons are known to gather kauna'oa, "ilima, "uhaloa, noni or ki on the grassy slopes and ramps of the H-1 freeway and some state highways on the neighbor islands. Certain landmarks and physical features are used by Hawaiian navigators for sailing, and the lines of sight from landmarks to the coast by fisherman to locate certain fishing spots. Blocking these features by the construction of buildings or tanks may constitute an adverse cultural impact.

The Environmental Council recommends that preparers of assessments analyzing cultural impacts adopt the following protocol:

(1) identify and consult with individuals and organizations with expertise concerning the types of cultural resources, practices and beliefs found within the broad geographical area, e.g., district or ahupua'a;

(2) identify and consult with individuals and organizations with knowledge of the area potentially affected by the proposed action;

- (3) receive information from or conduct ethnographic interviews and oral histories with persons having knowledge of the potentially affected area;
- (4) conduct ethnographic, historical, anthropological, sociological, and other culturally related documentary research;
- (5) identify and describe the cultural resources, practices and beliefs located within the potentially affected area; and
- (6) assess the impact of the proposed action, alternatives to the proposed action, and mitigation measures, on the cultural resources, practices and beliefs identified.

Interviews and oral histories with knowledgeable individuals may be recorded, if consent is given, and field visits by preparers accompanied by informants are encouraged. Persons interviewed should be afforded an opportunity to review the record of the interview, and consent to publish the record should be obtained whenever possible. For example, the precise location of human burials are likely to be withheld from a cultural impact assessment, but it is important that the document identify the impact a project would have on the burials. At times an informant may provide information only on the condition that it remain in confidence. The wishes of the informant should be respected.

Primary source materials reviewed and analyzed may include, as appropriate: Mahele, land court, census and tax records, including testimonies; vital statistics records; family histories and genealogies; previously published or recorded ethnographic interviews and oral histories; community studies, old maps and photographs; and other archival documents, including correspondence, newspaper or almanac articles, and visitor journals. Secondary source materials such as historical, sociological, and anthropological texts, manuscripts, and similar materials, published and unpublished, should also be consulted. Other materials which should be examined include prior land use proposals, decisions, and rulings which pertain to the study area.

III. CULTURAL IMPACT ASSESSMENT CONTENTS

In addition to the content requirements for environmental assessments and environmental impact statements, which are set out in HAR §§§§ 11-200-10 and 16 through 18, the portion of the assessment concerning cultural impacts should address, but not necessarily be limited to, the following matters:

1. A discussion of the methods applied and results of consultation with individuals and organizations identified by the preparer as being familiar with cultural practices and features associated with the project area, including any constraints or limitations which might have affected the quality of the information obtained.
2. A description of methods adopted by the preparer to identify, locate, and select the persons interviewed, including a discussion of the level of effort undertaken.
3. Ethnographic and oral history interview procedures, including the circumstances under which the interviews were conducted, and any constraints or limitations which might have affected the quality of the information obtained.
4. Biographical information concerning the individuals and organizations consulted, their particular expertise, and their historical and genealogical relationship to the project area, as well as information concerning the persons submitting information or interviewed, their particular knowledge and cultural expertise, if any, and their historical and genealogical relationship to the project area.
5. A discussion concerning historical and cultural source materials consulted, the institutions and repositories searched, and the level of effort undertaken. This discussion should include, if appropriate, the particular perspective of the authors, any opposing views, and any other relevant constraints, limitations or biases.
6. A discussion concerning the cultural resources, practices and beliefs identified, and, for resources and practices, their location within the broad geographical area in which the proposed action is located, as well as their direct or indirect significance or connection to the project site.
7. A discussion concerning the nature of the cultural practices and beliefs, and the significance of the cultural resources within the project area, affected directly or indirectly by the proposed project.
8. An explanation of confidential information that has been withheld from public disclosure in the assessment.
9. A discussion concerning any conflicting information in regard to identified cultural resources, practices and beliefs.
10. An analysis of the potential effect of any proposed physical alteration on cultural resources, practices or beliefs; the potential of the proposed action to isolate cultural resources, practices or beliefs from their setting; and the potential of the proposed action to introduce elements which may alter the setting in which cultural practices take place.
11. A bibliography of references, and attached records of interviews which were allowed to be disclosed.

The inclusion of this information will help make environmental assessments and environmental impact statements complete and meet the requirements of Chapter 343, HRS. If you have any questions, please call 586-4185.

You may ask OEQC if a directory of cultural impacts assessment providers is available.

Guidelines on Exemptions from Preparing Environmental Review Documents

Once an agency determines that an action “triggers” the EIS law, it must decide if the action is either:

- exempt from preparing a review document;
- will require a relatively brief review via an environmental assessment;
- or will require a full environmental impact statement.

Minor Projects Should be Declared Exempt

Certain activities are deemed minor or routine by the state or county agency that has oversight. The agency can declare the activity exempt from environmental review. There are 10 classes of exempt action under the EIS rules. The exempt classes of actions are summarized as follows:

- Operation, repairs, or maintenance of existing facilities or topographical features.
- Replacement or reconstruction of existing structures and facilities.
- Construction and location of single, new, small facilities or structures.
- Minor alterations in the conditions of land, water, or vegetation.
- Basic data collection, research and experimental management.
- Construction or placement of minor structures accessory to existing facilities.
- Interior alterations.
- Demolition of structures except historic structures.
- Zoning variances except shoreline setback variances.
- Continuing administrative activities such as purchasing supplies.

Examples of Exemptions

Here are some examples of actions usually declared exempt from environmental review. The exemption class is noted below in italics.

Equipment that is on state land (a trigger) requires an overhaul; this exemption represents *repair of existing facilities*.

Replacement of a drainage culvert, paid for by county funds (a trigger) is considered *replacement of existing structures*.

In the conservation district (a trigger) a homeowner wishes to add a porch to his home; this is *a minor accessory structure to an existing facility*.

Exclusions to the Exemptions

In some cases, an action that would usually be considered exempt can still require an environmental review. If an exempt action is proposed in a particularly sensitive environment, or if successive exempt actions could have a cumulative significant impact, the exempt status of the action would be invalid. Environmentally sensitive areas include flood plains, wetlands, beaches and coastal areas, erosion-prone areas, geologically hazardous land, critical habitat and estuaries.

Agencies Must Prepare and Keep Exemption Memos

The proposing or approving agency must prepare a memo declaring a project to be exempt from preparing an environmental assessment. The exemption memo must be kept on file and made available for review by the public. See the following example of an exemption memo.

[Departmental Letter Head]
DECLARATION OF EXEMPTION
from the preparation of an environmental assessment
under the authority of Chapter 343, HRS and Chapter 11-200, HAR

Project Title:
Project Number:
Project Description:
Consulted Parties:
Exemption Class:
Exempt Item Number:
Exempt Item Description:
Date of Agency Exemption List:

I have considered the potential effects of the above listed project as provided by Chapter 343, HRS and Chapter 11-200 HAR. I declare that this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

Signature of Director (or delegate)

Date:

Original: Agency file

Copy: Project file

Preparing an Agency Exemption List

Each agency, through time and experience, must develop its own list of specific types of actions which fall within the exempt classes, as long as these lists are consistent with both the letter and intent expressed in these exempt classes and Chapter 343, HRS. These lists and any amendments to the lists must be submitted to the council for review and concurrence. Agencies should review their exemption list every five years and revise it as appropriate. The following are the steps involved in finalizing a new or revised agency exemption list.

Steps in Preparing a New or Revised Agency Exemption List

1. Agency prepares draft exemption list. A review of previous exemption memos would be an excellent start to drafting the exemption list.
2. Agency submits the draft exemption list to the Environmental Council. *[Changes to the old list should be clearly distinguished (such as in Ramseyer format). Agency should also submit the exemption list on computer disk.]*
3. OEQC publishes draft exemption list in *The Environmental Notice*. This begins the 30 day review period for the public, agencies, OEQC and the Environmental Council. Council members, in their individual capacities, may submit comments made during the 30-day review period.
4. Agency responds to comment letters received from the public and other agencies. Agency prepares pre-final exemption list package. This package includes:
 - The pre-final exemption list
 - Copies of comments received from the public or other agencies
 - Responses to the comments
5. Environmental Council's Exemption List Committee meets to discuss pre-final exemption list. *[Agency representative should be present to answer questions.]*
6. Full Environmental Council meets to review and concur on the exemption list. *[Agency representative should be present to answer questions. This meeting is usually scheduled immediately after the committee meeting.]*
7. Agency finalizes new exemption list and files the list with OEQC.

Council's Periodic Review of Agency Exemption Lists

In compliance with the EIS Rules, the Council will periodically review agency exemption lists that are on file. Based on the review, the Council will recommend that the affected agency revise its exemption list and submit the amended list in accordance with the steps shown above.

An Example of an Agency Exemption List

COMPREHENSIVE EXEMPTION LIST, XXX COUNTY, YYY DEPARTMENT Date

Pursuant to Section 11-200-8(a) Hawaii Administrative Rules, the following types of action shall generally be declared exempt by the Department of YYY from requirements to prepare an environmental assessment.

EXEMPTION CLASS # 1: Operation, repairs, or maintenance of existing structures, facilities, equipment or topographic features involving negligible or no expansion or change of use beyond that previously existing:

- Repair of roof
- Painting of existing buildings

EXEMPTION CLASS #2: Replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced.

- Reconstruct pavement
- Replace office building

EXEMPTION CLASS # 3: Construction and location of single, new, small facilities or structures and the alteration and modification of the same and installation of new, small, equipment and facilities and the alteration and modification of same, including, but not limited to:

- (A) Single-family residences less than 3,500 square feet not in conjunction with the building of two or more such units;
- (B) Multi-unit structures designed for not more than four dwelling units if not in conjunction with the building of two or more such structures;
- (C) Stores, offices, and restaurants designed for total occupant load of 20 persons or less per structure, if not in conjunction with the building of two or more such structures; and
- (D) Water, sewage, electrical, gas, telephone, and other essential public utility services extension to serve such structure or facilities; accessory or appurtenant structures including garages, carports, patios, swimming pools, and fences; and, acquisition of utility easements.

- New district office building designed for less than 20 people

EXEMPTION CLASS #4: Minor alterations in the conditions of land, water, or vegetation.

- Landscaping alongside roadways, around buildings, and within existing parks

EXEMPTION CLASS #5: Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource.

- Biological and ecological study and survey
- Chemical and bacteriological laboratory analysis

EXEMPTION CLASS # 6: Construction or replacement of minor structures accessory to existing facilities.

- Plaques, sculptures, and statues
- Trash enclosures

EXEMPTION CLASS # 7: Interior alterations involving things such as partitions, plumbing, and electrical conveyances.

- Interior alterations and renovations to County buildings

EXEMPTION CLASS #8: Demolition of structures, except those structures located on any historic site as designated in the national register or Hawaii register as provided for in the National Historic Preservation Act of 1966, Public Law 89-665, 16 U.S. C. Sec. 470, as amended, or Chapter 6E, HRS.

- Demolition of County structures, except those structures located on any historic site

EXEMPTION CLASS #9: Zoning variances except shoreline setback variances.

- Zoning variances of County properties except shoreline setback variances

EXEMPTION CLASS # 10: Continuing administrative activities including, but not limited to, purchase of supplies and personnel-related actions.

- Buying motor vehicles

What the EIS Rules Say About Exemptions

EIS Rules, Section 11-200-8, Exempt classes of action.

(a) Chapter 343, HRS, states that a list of classes of actions shall be drawn up which, because they will probably have minimal or no significant effect on the environment, may be declared exempt by the proposing agency or approving agency from the preparation of an environmental assessment provided that agencies declaring an action exempt under this section shall obtain the advice of other outside agencies or individuals having jurisdiction or expertise as to the propriety of the exemption. Actions declared exempt from the preparation of an environmental assessment under this section are not exempt from complying with any other applicable statute or rule. The following list represents exempt classes of action:

(1) Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing;

(2) Replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced;

(3) Construction and location of single, new, small facilities or structures and the alteration and modification of the same and installation of new, small, equipment and facilities and the alteration and modification of same, including, but not limited to:

(A) Single-family residences less than 3,500 square feet not in conjunction with the building of two or more such units;

(B) Multi-unit structures designed for not more than four dwelling units if not in conjunction with the building of two or more such structures;

(C) Stores, offices, and restaurants designed for total occupant load of 20 persons or less per structure, if not in conjunction with the building of two or more such structures; and

(D) Water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve such structures or facilities; accessory or appurtenant structures including garages, carports, patios, swimming pools, and fences; and, acquisition of utility easements;

(4) Minor alterations in the conditions of land, water, or vegetation;

(5) Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource;

(6) Construction or placement of minor structures accessory to existing facilities;

(7) Interior alterations involving things such as partitions, plumbing, and electrical conveyances;

(8) Demolition of structures, except those structures located on any historic site as designated in the national register or Hawaii register as provided for in the National Historic Preservation Act of 1966, Public Law 89-665, 16 U.S.C. Sec. 470, as amended, or chapter 6E, HRS;

(9) Zoning variances except shoreline setback variances; and

(10) Continuing administrative activities including, but not limited to purchase of supplies and personnel-related actions.

(b) All exemptions under the classes in this section are inapplicable when the cumulative impact of planned successive actions in the same place, over time, is significant, or when an action that is normally insignificant in its impact on the environment may be significant in a particularly sensitive environment.

(c) Any agency, at any time, may request that a new exemption class be added, or that an existing one be amended or deleted. The request shall be submitted to the council, in writing, and contain detailed information to support the request as set forth in section 11-201-16, Environmental Council rules.

(d) Each agency, through time and experience, shall develop its own list of specific types of actions which fall within the exempt classes, as long as these lists are consistent with both the letter and intent expressed in these exempt classes and Chapter 343, HRS. These lists and any amendments to the lists shall be submitted to the council for review and concurrence. The lists shall be reviewed periodically by the council.

(e) Each agency shall maintain records of actions which it has found to be exempt from the requirements for preparation of an environmental assessment in Chapter 343, HRS, and each agency shall produce the records for review upon request.

(f) In the event the governor declares a state of emergency, the governor may exempt any affected program or action from complying with this chapter.

Shoreline Hardening Policy and Environmental Assessment Guidelines

December 1998

For a more thorough and detailed discussion of these issues please refer to the Coastal Erosion Management Plan (COEMAP) of the Department of Land and Natural Resources (DLNR).

I. Definition of Problem

Coastal property owners bear tremendous risks. Their property is vulnerable to tsunamis, storm surges, floods, high wave impacts, and hurricanes. In addition, owners along the shoreline bear the risk that their property may erode (Coyne et al., in press). Under common law, a riparian land owner “loses title to lands that are submerged through the process of erosion.”¹ The Hawaii Supreme Court has held that “registered ocean front property is subject to the same burdens and incidents as unregistered land, including erosion....[T]he precise location of the high water mark on the ground is subject to change and may always be altered by erosion.”² Because the land seaward of the upper reaches of the wash of the waves — including the beach — is a public trust resource,³ the state, as trustee, can restrain those activities that damage the resource.⁴ A private property owner does not have the right to impair public trust resources.

Tide gauges maintained by the National Oceanic and Atmospheric Administration demonstrate that our islands are experiencing a relative rise in sea level due to both global sea-level rise and local geologic factors (Fletcher, 1992). Additionally, in many places, waves and currents and human activities may reduce, or otherwise negatively impact, the volume of sand along beaches. Processes associated with sea-level rise, wave and current action, and/or human impacts may cause chronic erosion of coastal lands leading to a retreat of the shoreline. It is frequently difficult to distinguish natural from anthropogenic causes of erosion, and the two may often operate together along a particular shoreline. In response shoreline movement may occur slowly at an average annual rate, beaches may erode and recover on a seasonal cycle, or erosion may occur episodically associated with storms at unpredictable times and rates. Erosion is only a problem needing mitigation where human developments along the coast are threatened by shoreline fluctuations.

Armoring the shoreline with seawalls or revetments often stops the erosion of coastal land mauka of the structure. However, where beaches are undergoing long-term retreat, shoreline hardening eventually leads to beach narrowing, followed by beach loss (Hall, 1964; Birkemeier, 1981; Fischer, 1986; Hanson and Kraus, 1986; Komar and McDougal, 1988; Kraus, 1988; Tait and Griggs, 1990; Fletcher et al., 1997; Pope, 1997, and others). A hardened structure tends to shift the focus of erosion from the land to the beach fronting the wall. Seawalls and revetments are not a cure for the cause of erosion, but rather a defensive mechanism to mitigate land loss without regard for resulting impacts to adjacent environments such as the beach or the laterally adjacent shoreline (Raynor, 1953; U.S. Army Corps of Engineers, 1964; Walton and Sensabaugh, 1983; Tait and Griggs, 1990). Shoreline hardening not only leads to beach loss where shorelines are undergoing long-term retreat, but it may also exacerbate the erosion problem on adjacent shorelines through the process of sediment impoundment, or trapping of sand behind the wall. This has the effect of decreasing the overall sand volume available to beaches in the immediate vicinity thus reducing their ability to withstand and recover from normal seasonal wave stresses (Terich, 1975; McDougal, Sturtevant and Komar, 1987; Wood, 1988; Kraus, 1988; Komar and McDougal, 1988; Pope et al., 1997).

Studies of historical vegetation line movement in Hawaii indicate that many coasts are experiencing long-term retreat (Hwang, 1981; Sea Engineering, 1988; Makai Ocean Engineering and Sea Engineering, 1992; Fletcher et al., 1997; Coyne et al., in press) and that many of these coasts have been hardened as a result of the need to stop land loss. The trend of hardening has led to beach narrowing and beach loss on all islands (Hwang and Fletcher, 1992), especially on the islands of Oahu and Maui, where the combination of sea-level rise, sediment deficiencies, wave and current action, and extensive coastal development has resulted in significant beach loss (Hwang and Fletcher, 1992; Fletcher et al., 1997).

II. General Policy

Hardening of the shoreline should be considered the erosion management option of last resort, and its use should be avoided if other options are available. In addition, development in coastal hazard zones, including erosion hazard zones and coastal flood zones should be avoided in order to:

- (1) prevent the inevitable financial and personal hardships that befall individuals and families, and the expenditure of public funds that accompany the occurrence of coastal hazards on developed shorelines;
- (2) prevent the inevitable need to harden the shoreline where there is chronic erosion and the resulting loss of public beaches, lateral shoreline access, open space and view corridors, and littoral sand due to sediment impoundment behind walls;
- (3) mitigate threats to inhabited structures, and public infrastructure from coastal hazards; and
- (4) avoid the need for future public expenditures in responding to damage caused by hurricanes, tsunamis, high wave impacts and other coastal hazards;

III. Response to applications for seawalls, groins and revetments

All decision makers should discourage the construction of seawalls, revetments or other shoreline hardening devices that have the potential to lead to beach loss and that also have the tendency to encourage development in areas of chronic erosion.

As an alternative to a hardened structure, applicants should consider the applicability of coastal dune enhancement, beach and dune restoration, sand replenishment, and other “soft” approaches to mitigating coastal erosion. Applicants should also evaluate the potential for moving dwellings and other structures away from the shoreline as a means of mitigating the effects of erosion. Finally, any application should include the information requested in the attached guidelines for assessing shoreline alteration and hardening projects.

If after a thorough analysis of an application, the decision maker finds by clear and convincing evidence that the impact on public trust resources would be negligible, alternatives to hardening would be impractical, substantial hardship to the applicant is real, and these compelling reasons dictate that a hardened structure should be approved, any approval that is granted should be conditioned on the applicant monitoring shoreline response to the structure. Monitoring should be conducted using standard coastal surveying techniques to document short-term and long term changes in the beach profile both on the subaerial beach and offshore. In order to ensure that planning authorities retain the ability to protect our beaches and because future events may require the removal of seawalls, revetments or groins, all variances and permits should either have an expiration date (subject to renewal), or be revocable upon a finding of environmental impact. In other words, the variance or permit should not confer a vested right to keep the structure in perpetuity.

In general, a variance should be viewed as an extraordinary exception which should be granted sparingly. The reasons to justify approval must be substantial, serious and compelling.⁵

IV. Response to existing illegal seawalls, revetments, groins, or other structure or illegal activity

In assessing whether to remove existing seawalls, revetments and other shoreline hardening devices that have been constructed without proper review and approval, decision makers should consider:

- (1) the impact the structure or activity is having on coastal processes and access;
- (2) the impact of removal of the structure, or cessation of the activity on the coastline;
- (3) the immediate impact of removal of the structure, or cessation of the activity on nearby dwellings; and
- (4) alternatives to the structure or activity which can mitigate erosion impacts;
- (5) the assessment of fines or easement costs to be applied along the coastline as compensation for mitigating the negative impacts of the structure or activity.

Removal should be encouraged where removal will lead to restoration or improvement of coastal resources without causing substantial hardship to the owner, or creating a public hazard.

V. Long-term response to development in coastal hazard zones including erosion and flood hazard zones

So long as construction is allowed in coastal hazard zones, landowners and land managers will face financial burdens and threats to human safety. Where development is allowed in erosion or flood hazard zones, and structures are threatened by erosion or flooding, owners will consider protecting their investments with seawalls and revetments that may have a negative impact of the natural environment. A long-term solution will require that land use decision makers use: public awareness and education efforts; community-based resource protection programs; willing-owner redevelopment plans; hazard avoidance and minimization zoning and planning; and other participant-based and proactive environmental restoration, conservation and hazard avoidance discretionary authority they may have to recover lost coastal resources and mitigate future impacts. When state land use classifications are changed, CDUA's and SMA applications approved, zoning amended or subdivisions approved, conditions should be attached that restrict an applicant's (re)development proposals so that all construction activities occur outside of coastal hazard (erosion and flood) zones and future projected coastal hazard zones and above Base Flood Elevations (BFE's) as mapped by the Federal Emergency Management Agency and updated by state programs, and that beaches and coastal dunes are conserved or enhanced. This in general will require that construction activities recognize adequate, site-specific setbacks from the shoreline and appropriate landscaping and development practices. Applicants are encouraged to refer to the FEMA Coastal Construction Manual for guidelines (to be updated in 2000).

Counties should also consider establishing guidelines and procedures for redeveloping coastal areas where the beach and/or dune has been degraded by shoreline armoring. In the case of Honolulu, the use of Community Facilities Districts to establish enhanced opportunities for funding and implementing a combined beach-dune preservation or restoration system may be useful. Such efforts can translate to significant reductions in the cost of homeowner flood insurance through the National Flood-Insurance Program (NFIP) Community Rating System (CRS).

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Guidelines for Assessing Shoreline Alteration and Hardening Projects

It is the policy of the State of Hawaii under HRS Chapter 205A to discourage all shoreline hardening that may affect access to, or the configuration of, our island beaches.

Any Environmental Assessment prepared in conjunction with an application to construct a seawall, revetment or similar structure, or an activity that will alter in any way littoral processes affecting the shoreline, should be accompanied by appropriate justification and detailed studies including, but not limited to, the following:

1. Historical shoreline analysis of coastal erosion and accretion rates

This should include a description of all movements of the neighboring shoreline over at least the past 30 years. This analysis should be based, at least in part, on aerial photographs available through government agencies and private vendors.⁶ The analysis should provide a detailed history of erosion and accretion patterns using all available evidence. This analysis should include descriptions of shoreline erosion rates, a map (with scale, north arrow, and title) showing past positions of the

shoreline in the project area, and an analysis of the causes of erosion. It is especially important to describe how the project will mitigate the cause(s) of erosion, and avoid exacerbating erosion on the adjacent shoreline.

2. Shoreline type

A description of the nature of the affected shoreline, whether sandy, rocky, mud flats or any other configuration. The history and characteristics of adjoining sand dunes, streams and channels, and reefs should be included.

3. Site maps

Submit maps with title, north arrow and scale, and photographs that clearly show the current certified shoreline, previous certified shorelines, the private property line and the location of the proposed structure. Any nearby public access right-of-way should also be depicted. Applicants should also include a color copy of a color vertical aerial photograph⁷ that shows the project area and the adjacent offshore region. The applicant may wish to identify important components of the project on the color photo. Color aerial photos exist for most of the shoreline area of Hawaii and often clearly show important geologic and geographic features that are critical to fully evaluating the environmental context, and even the likelihood of success, of a proposed project. Evaluation of an aerial photo of a project site can be an important tool yielding significant information relevant to the applicants planning efforts.

4. Beach profiles

Submit beach profiles that extend offshore at appropriate intervals along the beach indicating the width and slope of both the submerged and dry portions of the beach and showing major features of the beach. Profiles should extend from the mauka toe of the primary dune to the offshore depth of closure of profile fluctuations.⁸

5. Existing walls

Submit an analysis of any existing nearby walls or revetments and their cumulative impacts on the shoreline.

6. Description of improvements

A description of structures and improvements (such as homes or swimming pools) on the subject property, their distance from the property line and shoreline, how they may be affected by the construction of the proposed hardening project, and the specific feasibility of relocating them as a hazard mitigation activity.

7. Coastal hazard history

A coastal hazard analysis for the area in question. This should include any relevant coastal processes such as hazardous currents and seasonal wave patterns, including a description of the recent incidence of damaging high waves, high winds or water levels from storms, vulnerability to tsunamis, and the best estimate of Base Flood Elevations and flood zone designation as mapped by the FEMA Flood Insurance Rate Maps.

8. Waves and currents

A description of the wave and current regime acting along the shoreline in question, including, a wave refraction analysis (one simple form of this analysis is to describe wave crest patterns as shown in an aerial photograph), a description of littoral currents and their seasonal patterns and the impact of the proposed activity on these patterns.

9. Sediment movement

If the proposed activity involves any action that may interfere with the normal pattern of sediment transport along the coast, or alter in any way the morphology of the shoreline or the resident sand volume, applicants must submit a description of these alterations and their impact on shoreline processes including an estimate of the annual volume of sediment in transport and seasonal patterns of transport, and whether these impacts may have any deleterious effects on neighboring shoreline segments.

10. Thirty-year erosion hazard

An analysis that uses annual erosion rate data to project the location of the 30-yr erosion hazard zone as measured from the certified shoreline or vegetation line in the absence of any shoreline stabilization structures. This information should be provided in the form of a mapped line or zone, and accompany text descriptions. The analysis may be combined with items 1 or 3, or submitted independently.

11. Photographs

Eye-level (taken by an individual standing on the ground) photos of the site that illustrate past and present conditions and locate the proposed structure.

12. Alternatives

All alternatives to shoreline hardening should be thoroughly researched and analyzed. These alternatives should include beach and/or dune restoration using sand replenishment, retreat from the shoreline by moving existing structures inland, and a no action alternative.

13. P.E. Seal

The seal of a Professional Engineer (P.E.) with experience in the area of coastal engineering should be included with any technical plans for a shoreline hardening structure that accompany the application. The inclusion of this information will help make an Environmental Assessment complete and meet the requirements of Chapter 343, HRS. Only after thorough study and analysis should any permit for shoreline hardening be considered.

NOTES

1. R.R. Powell 5A Powell on Real Property ° 66.01 [2] (1994).
2. County of Hawaii v. Sotomura. 55 Haw. 176, 180 (1973).
3. Application of Sanborn. 57 Haw. 585, 562.
4. Orion Corp. v. State 747 P.2d 1062 (Wash. 1987); U.S. v. State Water Resources Control Board. 227 Cal. Rptr 161 (Cal. App. 1 Dist 1986); State Dept. of Environmental Protection v. Jersey Central P & C Co. 308 A.2d 671 (N.J. Super L. 1973).
5. R.R. Powell 6 Powell on Real Property ° 79c.16[1] (1995).
6. Aerial photographs may be obtained from Air Surveys Hawaii, Inc.; Towill, R.M., Corp.; City and County of Honolulu, Coastal Lands Program, Department of Planning and Permitting; DBEDT, Office of Planning; and the various planning and permitting departments in each county.
7. Color vertical aerial photographs usually can be purchased at reasonable price from Air Surveys Hawaii, Inc.
8. Note: Please refer to U.S. Army Corps of Engineers Coastal Engineering Technical Notices II-31 (11/93), II-40, 3/98, and other relevant documents for guidance.

April 11, 2013.
This Guide is obsolete.
Use only for historical purposes.

Guidelines for Sustainable Building Design in Hawai‘i

A planner’s checklist

(Adopted by the Environmental Council on October 13, 1999)

Introduction

Hawai‘i law calls for efforts to conserve natural resources, promote efficient use of water and energy and encourage recycling of waste products. Planning a project from the very beginning to include sustainable design concepts can be a critical step toward meeting these goals.

The purpose of the state’s environmental review law (HRS Ch. 343) is to encourage a full, accurate and complete analysis of proposed actions, promote public participation and support enlightened decision making by public officials. The Office of Environmental Quality Control offers the following guidelines for preparers of environmental reviews under the authority of HRS 343 to assist agencies and applicants in meeting these goals.

These guidelines do not constitute rules or law. They have been refined by staff and peer review to provide a checklist of items that will help the design team create projects that will have a minimal impact on Hawai‘i’s environment and make wise use of our natural resources. In a word, projects that are *sustainable*.

A sustainable building is built to minimize energy use, expense, waste, and impact on the environment. It seeks to improve the region’s sustainability by meeting the needs of Hawai‘i’s residents and visitors today without compromising the needs of future generations. Compared to conventional projects, a resource-efficient building project will:

- I. Use less energy for operation and maintenance
- II. Contain less *embodied* energy (e.g. locally produced building products often contain less *embodied* energy than imported products because they require less energy-consuming transportation.)
- III. Protect the environment by preserving/conserving water and other natural resources and by minimizing impact on the site and ecosystems
- IV. Minimize health risks to those who construct, maintain, and occupy the building
- V. Minimize construction waste
- VI. Recycle and reuse generated construction wastes
- VII. Use resource-efficient building materials (e.g. materials with recycled content and low embodied energy, and materials that are recyclable, renewable, environmentally benign, non-toxic, low VOC (Volatile Organic Compound) emitting, durable, and that give high life cycle value for the cost.)
- VIII. Provide the highest quality product practical at competitive (affordable) first and life cycle costs.

In order to avoid excessive overlapping of items, the checklist is designed to be read in totality, not just as individual sections. This checklist tries to address a range of project types, large scale as well as small scale. Please use items that are appropriate to the type and scale of the project.

Although this list will help promote careful and sensitive planning, mere compliance with this checklist does not confirm sustainability. Compliance with and knowledge of current building codes by users of this checklist is also required.

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- IX. Commissioning & Construction Project Close-out
- X. Occupancy and Operation
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I. Pre Design

- ___1. Hold programming team meeting with client representative, Project Manager, planning consultant, architectural consultant, civil engineer, mechanical, electrical, plumbing (MEP) engineer, structural engineer, landscape architect, interior designer, sustainability consultant and other consultants as required by the project. Identify project and sustainability goals. Client representatives and consultants need to work together to ensure that project and environmental goals are met.
- ___2. Develop sustainable guideline goals to insert into outline specifications as part of the Schematic Design documents. Select goals from the following sections that are appropriate for the project.
- ___3. Use Cost-Benefit Method for economic analysis of the sustainability measures chosen. (Cost-Benefit Method is a method of evaluating project choices and investments by comparing the present and life cycle value of expected benefits to the present and life cycle value of expected costs.)
- ___4. Include "Commissioning" in the project budget and schedule. (Building "Commissioning" is the process of ensuring that systems are designed, installed, functionally tested, and capable of being operated and maintained in accordance with specifications that meet the owner's needs, and recognize the owner's financial and operational capacity. It improves the performance of the building systems, resulting in energy efficiency and conservation, improved air quality and lower operation costs. *Refer to Section IX.*)

II. Site Selection & Site Design

A. Site Selection

- ___1. Analyze and assess site characteristics such as vegetation, topography, geology, climate, natural access, solar orientation patterns, water and drainage, and existing utility and transportation infrastructure to determine the appropriate use of the site.
- ___2. Whenever possible, select a site in a neighborhood where the project can have a positive social, economic and/or environmental impact.
- ___3. Select a site with short connections to existing municipal infrastructure (sewer lines, water, waste water treatment plant, roads, gas, electricity, telephone, data communication lines and services). Select a site close to mass transportation, bicycle routes and pedestrian access.

B. Site Preparation and Design

- ___1. Prepare a thorough existing conditions topographic site plan depicting topography, natural and built features, vegetation, location of site utilities and include solar information, rainfall data and direction of prevailing winds. Preserve existing resources and natural features to enhance the design and add aesthetic, economic and practical value. Design to minimize the environmental impact of the development on vegetation and topography.
- ___2. Site building(s) to take advantage of natural features and maximize their beneficial effects. Provide for solar access, daylighting and natural cooling. Design ways to integrate the building(s) with the site that maximizes and preserves positive site characteristics, enhances human comfort, safety and health, and achieves operational efficiencies.
- ___3. Locate building(s) to encourage bicycle and pedestrian access and pedestrian oriented uses. Provide bicycle and pedestrian paths, bicycle racks, etc. Racks should be visible and accessible to promote and encourage bicycle commuting.
- ___4. Retain existing topsoil and maintain soil health by clearing only the areas reserved for the construction of streets, driveways, parking areas, and building foundations. Replant exposed soil areas as soon as possible. Reuse excavated soils for fill and cut vegetation for mulch.
- ___5. Grade slopes to a ratio of less than 2 : 1 (run to rise). Balance cut and fill to eliminate hauling. Check grading frequently to prevent accidental over excavation.
- ___6. Minimize the disruption of site drainage patterns. Provide erosion and dust controls, positive site drainage, and siltation basins as required to protect the site during and after construction, especially, in the event of a major storm.
- ___7. Minimize the area required for the building footprint. Consolidate utility and infrastructure in common corridors to minimize site degradation, and cost, improve efficiency, and reduce impermeable surfaces.
- ___8. For termite protection, use non toxic alternatives to pesticides and herbicides, such as Borate treated lumber, Basaltic Termite Barrier, stainless steel termite barrier mesh, and termite resistant materials.

III. Building Design

- ___1. Consider adaptive re-use of existing structures instead of demolishing and/or constructing a new building. Consult the State Historic Preservation Officer for possible existing historic sites that may meet the project needs.
- ___2. Plan for high flexibility while designing building shell and interior spaces to accommodate changing needs of the occupants, and thereby extend the life span of the building.
- ___3. Design for re-use and/or disassembly. (For recyclable and reusable building products, see Section VII).
- ___4. Design space for recycling and waste diversion opportunities during occupancy.
- ___5. Provide facilities for bicycle and pedestrian commuters (showers, lockers, bike racks, etc.) in commercial areas and other suitable locations.

- ___6. Plan for a comfortable and healthy work environment. Include inviting outdoor spaces, wherever possible. (Refer to Section VIII.)
- ___7. Provide an Integrated Pest Management approach. The use of products such as Termi-mesh, Basaltic Termite Barrier and the Sentricon “bait” system can provide long term protection from termite damage and reduce environmental pollution.
- ___8. Design a building that is energy efficient and resource efficient. (See Sections IV, V, VII.) Determine building operation by-products such as heat gain and build up, waste/gray-water and energy consumption, and plan to minimize them or find alternate uses for them.
- ___9. For natural cooling, use
 - Reflective or light colored roofing, radiant barrier and/or insulation, roof vents
 - Light colored paving (concrete) and building surfaces
 - Tree Planting to shade buildings and paved areas
 - Building orientation and design that captures trade winds and/or provides for convective cooling of interior spaces when there is no wind.

IV. Energy Use

- ___1. Obtain a copy of the State of Hawai‘i Model Energy Code (available through the Hawai‘i State Energy Division, at Tel. 587-3811). Exceed its requirements. (Contact local utility companies for information on tax credits and utility-sponsored programs offering rebates and incentives to businesses for installing qualifying energy efficient technologies.)
- ___2. Use site sensitive orientation to :
 - a. Minimize cooling loads through site shading and carefully planned east-west orientation.
 - b. Incorporate natural ventilation by channeling trade winds.
 - c. Maximize daylighting.
- ___3. Design south, east and west shading devices to minimize solar heat gain.
- ___4. Use spectrally selective tints or spectrally selective low-e glazing with a Solar Heat Gain Coefficient (SHGC) of 0.4 or less.
- ___5. Minimize effects of thermal bridging in walls, roofs and window systems.
- ___6. Maximize efficiencies for lighting, Heating, Ventilation, Air Conditioning (HVAC) systems and other equipment. Use insulation and/or radiant barriers, natural ventilation, ceiling fans and shading to avoid the use of air conditioning whenever appropriate.
- ___7. Eliminate hot water in restrooms when possible.
- ___8. Provide tenant sub-metering to encourage utility use accountability.
- ___9. Use renewable energy. Use solar water heaters and consider the use of photovoltaics and Building Integrated Photovoltaics (BIPV).
- ___10. Use available energy resources such as waste heat recovery, when feasible.
 - A. Lighting
 - ___1. Design for at least 15% lower interior lighting power allowance than the Energy Code.
 - ___2. Select lamps and ballasts with the highest efficiency, compatible with the desired level of illumination and color rendering specifications. Examples that combine improved color rendering with efficient energy use include compact fluorescents and T8 fluorescents that use tri-phosphor gases.
 - ___3. Select lighting fixtures which maximize system efficacy and which have heat removal capabilities
 - ___4. Reduce light absorption on surfaces by selecting colors and finishes that provide high reflectance values without glare.
 - ___5. Use task lighting with low ambient light levels.
 - ___6. Maximize daylighting through the use of vertical fenestration, light shelves, skylights, clerestories, building form and orientation as well as through translucent or transparent interior partitions. Coordinate daylighting with electrical lighting for maximum electrical efficiency.
 - ___7. Incorporate daylighting controls and/or motion activated light controls in low or intermittent use areas.
 - ___8. Avoid light spillage in exterior lighting by using directional fixtures.
 - ___9. Minimize light overlap in exterior lighting schemes.
 - ___10. Use lumen maintenance procedures and controls.
 - B. Mechanical Systems
 - ___1. Design to comply with the Energy Code and to exceed its efficiency requirements.
 - ___2. Use “Smart Building” monitor/control systems when appropriate.
 - ___3. Utilize thermal storage for reduction of peak energy usage.
 - ___4. Use Variable air volume systems to save fan power.

- ___5. Use variable speed drives on pumping systems and fans for cooling towers and air handlers.
- ___6. Use air-cooled refrigeration equipment or use cooling towers designed to reduce drift.
- ___7. Specify premium efficiency motors.
- ___8. Reduce the need for mechanical ventilation by reducing sources of indoor air pollution. Use high efficiency air filters and ultraviolet lamps in air handling units. Provide for regular maintenance of filtration systems. Use ASHRAE standards as minimum.
- ___9. Locate fresh air intakes away from polluted or overheated areas. Locate on roof where possible. Separate air intake from air exhausts by at least 40 ft.
- ___10. Use separate HVAC systems to serve areas that operate on widely differing schedules and/or design conditions.
- ___11. Use shut off or set back controls on HVAC system when areas are not occupied.
- ___12. Use condenser heat, waste heat or solar energy. (Contact local utility companies for information on the utility-sponsored Commercial and Industrial Energy Efficiency Programs which offer incentives to businesses for installing qualifying energy efficient technologies.)
- ___13. Evaluate plug-in loads for energy efficiency and power saving features.
- ___14. Improve comfort and save energy by reducing the relative humidity by waste reheat, heat pipes or solar heat.
- ___15. Minimize heat gain from equipment and appliances by using:
 - a. Environmental Protection Agency (EPA) Energy Star rated appliances.
 - b. Hoods and exhaust fans to remove heat from concentrated sources.
 - c. High performance water heating that exceeds the Energy Code requirements.
- ___16. Specify HVAC system “commissioning” period to reduce occupant exposure to Indoor Air Quality (IAQ) contaminants and to maximize system efficiency.

V. Water Use

A. Building Water

- ___1. Install water conserving, low flow fixtures as required by the Uniform Plumbing Code.
- ___2. If practical, eliminate hot water in restrooms.
- ___3. Use self closing faucets (infrared sensors or spring loaded faucets) for lavatories and sinks.

B. Landscaping and Irrigation (See Section VI.)

VI. Landscape and Irrigation

- ___1. Incorporate water efficient landscaping (xeriscaping) using the following principles:
 - A. Planning, Efficient irrigation: Create watering zones for different conditions. Separate vegetation types by watering requirements. Install moisture sensors to prevent operation of the irrigation system in the rain or if the soil has adequate moisture. Use appropriate sprinkler heads.
 - B. Soil analysis/improvement: Use (locally made) soil amendments and compost for plant nourishment, improved water absorption and holding capacity.
 - C. Appropriate plant selection: Use drought tolerant and/or slow growing hardy grasses, native and indigenous plants, shrubs, ground covers, trees, appropriate for local conditions, to minimize the need for irrigation.
 - D. Practical turf areas: Turf only in areas where it provides functional benefits.
 - E. Mulches: Use mulches to minimize evaporation, reduce weed growth and retard erosion.

Contact the local Board of Water Supply for additional information on xeriscaping such as efficient irrigation, soil improvements, mulching, lists of low water-demand plants, tours of xeriscaped facilities, and xeriscape classes.
- ___2. Protect existing beneficial site features and save trees to prevent erosion. Establish and carefully mark tree protection areas well before construction.
- ___3. Limit staging areas and prevent unnecessary grading of the site to protect existing, especially native, vegetation.
- ___4. Use top soil from the graded areas, stockpiled on the site and protected with a silt fence to reduce the need for imported top soil.
- ___5. Irrigate with non-potable water or reclaimed water when feasible. Collect rainwater from the roof for irrigation.
- ___6. Sub-meter the irrigation system to reduce water consumption and consequently water and sewer fees. Contact the local county agency to obtain irrigation sub-metering requirements and procedures. Locate irrigation controls within sight of the irrigated areas to verify that the system is operating properly.
- ___7. Use pervious paving instead of concrete or asphalt paving. Use natural and man-made berms, hills and swales to control water runoff.

- ___8. Avoid the use of solvents that contain or leach out pollutants that can contaminate the water resources and runoff. Contact the State of Hawai'i Clean Water Branch at 586-4309 to determine whether a NPDES (National Pollutant Discharge Elimination System) permit is required.
- ___9. Use Integrated Pest Management (IPM) techniques. IPM involves a carefully managed use of biological and chemical pest control tactics. It emphasizes minimizing the use of pesticides and maximizing the use of natural process
- ___10. Use trees and bushes that are felled at the building site (i.e. mulch, fence posts). Leave grass trimmings on the lawn to reduce green waste and enhance the natural health of lawns.
- ___11. Use recycled content, decay and weather resistant landscape materials such as plastic lumber for planters, benches and decks.

VII. Building Materials & Solid Waste Management

A. Material Selection and Design

- ___1. Use durable products.
- ___2. Specify and use natural products or products with low embodied energy and/or high recycled content. Products with recycled content include steel, concrete with glass, drywall, carpet, etc. Use ground recycled concrete, graded glass cullet or asphalt as base or fill material.
- ___3. Specify low toxic or non-toxic materials whenever possible, such as low VOC (Volatile Organic Compounds) paints, sealers and adhesives and low or formaldehyde-free materials. Do not use products with CFCs (Chloro-fluoro-carbons).
- ___4. Use locally produced products such as plastic lumber, insulation, hydro-mulch, glass tiles, compost.
- ___5. Use advanced framing systems that reduce waste, two stud corners, engineered structural products and prefabricated panel systems.
- ___6. Use materials which require limited or no application of finishing or surface preparation. (i.e. finished concrete floor surface, glass block and glazing materials, concrete block masonry, etc.).
- ___7. Use re-milled salvaged lumber where appropriate and as available. Avoid the use of old growth timber.
- ___8. Use sustainably harvested timber.
- ___9. Commit to a material selection program that emphasizes efficient and environmentally sensitive use of building materials, and that uses locally available building materials. (A list of Earth friendly products and materials is available through the Green House Hawai'i Project. Call Clean Hawai'i Center, Tel. 587-3802 for the list.)

B. Solid Waste Management, Recycling and Diversion Plan

- ___1. Prepare a job-site recycling plan and post it at the job-site office.
- ___2. Conduct pre-construction waste minimization and recycling training for employees and sub-contractors.
- ___3. Use a central area for all cutting.
- ___4. Establish a dedicated waste separation/diversion area. Include Waste/Compost/Recycling collection areas and systems for use during construction process and during the operational life cycle of the building.
- ___5. Separate and divert all unused or waste cardboard, ferrous scrap, construction materials and fixtures for recycling and/or forwarding to a salvage exchange facility. Information on "Minimizing C&D (construction and demolition) waste in Hawai'i" is available through Department of Health, Office of Solid Waste Management, Tel. 586-4240.
- ___6. Use all green waste, untreated wood and clean drywall on site as soil amendments or divert to offsite recycling facilities.
- ___7. Use concrete and asphalt rubble on-site or forward the material for offsite recycling.
- ___8. Carefully manage and control waste solvents, paints, sealants, and their used containers. Separate these materials from C&D (construction and demolition) waste and store and dispose them of them carefully.
- ___9. Donate unused paint, solvents, sealants to non-profit organizations or list on HIMEX (Hawai'i Materials Exchange). HIMEX is a free service operated by Maui Recycling Group, that offers an alternative to landfill disposal of usable materials, and facilitates no-cost trades. See web site, www.himex.org.
- ___10. Use suppliers that re-use or recycle packaging material whenever possible.

VIII. Indoor Air Quality

- ___1. Design an HVAC system with adequate supply of outdoor air, good ventilation rates, even air distribution, sufficient exhaust ventilation and appropriate air cleaners.
- ___2. Develop and specify Indoor Air Quality (IAQ) requirements during design and contract document phases of the project. Monitor compliance in order to minimize or contain IAQ contaminant sources during construction, renovation and remodeling.
- ___3. Notify occupants of any type of construction, renovation and remodeling and the effects on IAQ.
- ___4. Inspect existing buildings to determine if asbestos and lead paint are present and arrange for removal or abatement as needed.
- ___5. Supply workers with, and ensure the use of VOC (Volatile Organic Compounds)-safe masks where required.

- ___6. Ensure that HVAC systems are installed, operated and maintained in a manner consistent with their design. Use UV lamps in Air Handling Units to eliminate mold and mildew growth. An improperly functioning HVAC system can harbor biological contaminants such as viruses, bacteria, molds, fungi and pollen, and can cause Sick Building Syndrome (SBS).
- ___7. Install separate exhaust fans in rooms where air polluting office equipment is used, and exhaust directly to the exterior of the building, at sufficient distance from the air intake vents.
- ___8. Place bird guards over air intakes to prevent pollution of shafts and HVAC ducts.
- ___9. Control indoor air pollution by selecting products and finishes that are low or non-toxic and low VOC emitting. Common sources of indoor chemical contaminants are adhesives, carpeting, upholstery, manufactured wood products, copy machines, pesticides and cleaning agents.
- ___10. Schedule finish application work to minimize absorption of VOCs into surrounding materials e.g. allow sufficient time for paint and clear finishes to dry before installing carpet and upholstered furniture. Increase ventilation rates during periods of increased pollution.
- ___11. Allow a flush-out period after construction, renovation, remodeling or pesticide application to minimize occupant exposure to chemicals and contaminants.

IX. Commissioning & Construction Project Closeout

- ___1. Appoint a Commissioning Authority to develop and implement a commissioning plan and a preventative maintenance plan. Project Manager's responsibilities must include coordination of commissioning activities during project closeout.
- ___2. Commissioning team should successfully demonstrate all systems and perform operator training before final acceptance.
- ___3. Provide flush-out period to remove air borne contaminants from the building and systems.
- ___4. Provide as-built drawings and documentation for all systems. Provide data on equipment maintenance and their control strategies as well as maintenance and cleaning instructions for finish materials.

X. Occupancy and Operation

A. General Objectives

- ___1. Develop a User's Manual for building occupants that emphasizes the need for Owner/Management commitment to efficient sustainable operations.
- ___2. Management's responsibilities must include ensuring that sustainability policies are carried out.

B. Energy

- ___1. Purchase EPA rated, Energy Star, energy-efficient office equipment, appliances, computers, and copiers. (Energy Star is a program sponsored by U.S. Dep. Of Energy. Use of these products will contribute to reduced energy costs for buildings and reduce air pollution.)
- ___2. Institute an employee education program about the efficient use of building systems and appliances, occupants impact on and responsibility for water use, energy use, waste generation, waste recycling programs, etc.
- ___3. Re-commission systems and update performance documentation periodically per recommendations of the Commissioning Authority, or whenever modifications are made to the systems.

C. Water

- ___1. Start the watering cycle in the early morning in order to minimize evaporation.
- ___2. Manage the chemical treatment of cooling tower water to reduce water consumption.

D. Air

- ___1. Provide incentives which encourage building occupants to use alternatives to and to reduce the use of single occupancy vehicles.
- ___2. Provide a location map of services within walking distance of the place of employment (child care, restaurants, gyms, shopping).
- ___3. Periodically monitor or check for indoor pollutants in building.
- ___4. Provide an IAQ plan for tenants, staff and management that establishes policies and documentation procedures for controlling and reporting indoor air pollution. This helps tenants and staff understand their responsibility to protect the air quality of the facility.

E. Materials and Products

- ___1. Purchase business products with recycled content such as paper, toners, etc.

- ___2. Purchase Furniture made with sustainably harvested wood, or with recycled and recycled content materials, which will not off gas VOC's.
- ___3. Remodeling and painting should comply with or improve on original sustainable design intent.
- ___4. Use low VOC, non-toxic, phosphate and chlorine free, biodegradable cleaning products.

F. Solid Waste

- ___1. Collect recyclable business waste such as paper, cardboard boxes, and soda cans.
- ___2. Avoid single use items such as paper or Styrofoam cups and plates, and plastic utensils.

XI. Resources

Financing: Energy Efficiency in Buildings. U.S. Department of Energy, DOE/EE-0152, May, 1998 (Call Tel.1-800-DOE-EREC or visit local office)

Building Commissioning: The Key to Quality Assurance. U.S. Department of Energy, DOE/EE-0153, May, 1998 (Call Tel.1-800-DOE-EREC or visit local office)

Guide to Resource-Efficient Building in Hawaii. University of Hawai'i at Manoa, School of Architecture and Energy, Resources and Technology Division, Department of Business, Economic Development and Tourism, October 1998. (Call Tel. 587-3804 for publication)

Hawaii Model Energy Code. Energy, Resources and Technology Division, Department of Business, Economic Development and Tourism, November 1997 (Call Tel. 587-3810 for publication)

Photovoltaics in the Built Environment: A Design Guide for Architects and Engineers. NREL Publications, DOE/GO #10097-436, September 1997 (Call Tel.1-800-DOE-EREC or visit local office)

Building Integrated Photovoltaics: A Case Study. NREL Publications #TP-472-7574, March 1995 (Call Tel.1-800-DOE-EREC or visit local office)

Solar Electric Applications: An overview of Today's Applications. NREL Publications, DOE/GO #10097-357, Revised February, 1997 (Call Tel.1-800-DOE-EREC or visit local office)

Green Lights: An Enlightened Approach to Energy Efficiency and Pollution Prevention. U.S. Environmental Protection Agency, Pacific Island Contact Office (Call Tel. 541-2710 for publication.)

Healthy Lawn, Healthy Environment. U.S. Environmental Protection Agency, Pacific Island Contact Office. (Call Tel. 541-2710 for this and related publications)

How to Plant a Native Hawaiian Garden. Office of Environmental Quality Control (OEQC), Department of Health, State of Hawai'i (Call Tel. 586-4185 for publication)

Buy Recycled in Hawai'i. Clean Hawai'i Center, Energy, Resources and Technology Division, Department of Business, Economic Development and Tourism, November 1997. (Call Tel. 587-3802 for publication)

Hawai'i Recycling Industry Guide and other recycling and reuse related fact sheets. Clean Hawai'i Center, Energy, Resources and Technology Division, Department of Business, Economic Development and Tourism, July 1999. (Call Tel. 587-3802 for publication)

Minimizing Construction and Demolition Waste. Office of Solid Waste Management, Department of Health and Clean Hawai'i Center, Energy, Resources and Technology Division, Department of Business, Economic Development and Tourism, February 1998. (Call Tel. 586-4240 for publication)

Contractor's Waste Management Guide and Construction and demolition Waste Management Facilities Directory. Clean Hawai'i Center, Energy, Resources and Technology Division, Department of Business, Economic Development and Tourism, 1999. (Call Tel. 587-3802 for publication)

Waste Management and Action: Construction Industry. Department of Health, Solid and Hazardous Waste Branch (Call Tel. 586-7496 for publication)

Business Guide For reducing Solid Waste. U.S. Environmental Protection Agency, Pacific Island Contact Office, Tel. 541-2710 (Call for publication.)

The Inside Story: A Guide to Indoor Air Quality. U.S. Environmental Protection Agency, Pacific Island Contact Office, Tel. 541-2710 (Call for this and related publications.) Additional information is available from the American Lung Association, Hawai'i, Tel. 537-5966

Selecting Healthier Flooring Materials. American Lung Association and Clean Hawai'i Center, February 1999. (Call Tel. 537-5966 x307)

Office Paper Recycling: An Implementation Manual. U.S. Environmental Protection Agency, Pacific Island Contact Office, Tel. 541-2710 (Call for publication.)

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Guidelines for Assessing Water Well Development Projects

Prepared by the Office of Environmental Quality Control, May 1998

I. INTRODUCTION

Water is recognized as one of Hawaii's most important resources. Its quality and availability for a wide variety of purposes is essential to both humans and the natural environment. Hawaii's water supply, development and distribution is a critical environmental issue today and is likely to become even more sensitive in the future. The establishment of guidance protocols such as this will encourage understanding and careful planning of this important resource.

These guidelines are not new rules or law. The purpose of the guidelines is to provide preparers and reviewers a general standard of completeness to apply for any EA or EIS relating to well development. The objectives of this guidance document are to integrate the review of environmental concerns with existing planning and regulatory processes and to alert decision makers of the environmental effects of the well project. The approving agency or accepting authority remains responsible for the contents of the EA or EIS.

Pursuant to HAR §11-200-8(a)(5), basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource may be exempt from preparing an environmental assessment. Accordingly, drilling of monitor wells as defined by the CWRM (provided the well shall not be capable of being used or intended to be used to withdraw groundwater for the purposes of exploring or developing ground water) may be exempt.

Environmental assessments for exploratory wells should not need to comply with all the information requirements below because some of the information will not be available until the well is tested. Should the exploratory well yield positive results and demonstrate production capability, a second environmental assessment for the production well should be prepared to comply with all the information requirements.

II. IMPACT ASSESSMENT CONTENT

In addition to the content requirements for environmental assessments and impact statements, which are set out in the EIS rules, any well development project should include the following information.

1. Orientation Maps

Maps with the appropriate scale and coverage to analyze the aquifer or hydrologic unit that show the following:

- a) General information: location of proposed well, TMK or land ownership maps, location of existing and future wells in the affected aquifer or hydrologic unit, and general references such as roads, schools, etc.
- b) Hydrologic information: aquifer or hydrologic unit boundary, nearby streams and wetlands, known or assumed groundwater flowpaths, known or assumed water level contours.
- c) Contamination information: Points or regions of known contamination, points of potential contamination (landfills, individual wastewater disposal systems (cesspools, septic tanks, aeration units), hazardous waste sites, dry wells and injection wells), known or assumed chloride levels at specified depths in relation to nearest or adjacent wells, likely wellhead protection area for the proposed well.

NOTE: New injection wells and dry wells are typically prohibited from within 1/4 mile of a drinking water well. Other restrictions could apply. New water wells should not be situated in areas that have a significant need for injection wells, drywells or on-site individual wastewater disposal systems.

2. Aquifer or Hydrologic Unit Status

A description of the aquifer or hydrologic unit status including the following:

- * Sustainable yields or other measures of water availability

- * Authorized water use by the Commission on Water Resource Management (for Water Management Areas only)
- * Data table presenting the following information as appropriate
 - Current water use totals, including subtotals for individual users
 - Current installed capacity including subtotals for individual wells and/or groups of wells.
 - Pending installed capacity and/or use for the proposed well and subtotals for individual wells and/or groups of wells within the aquifer

NOTE: Format suggestions and sample data tables for aquifer status data are contained in appendix #1.

3. Contamination Analysis and Vulnerability Assessment

A record of contamination problems in the aquifer or hydrologic unit including but not limited to saltwater intrusion, turbidity, heavy metals, inorganic and organic chemicals, microbiological agents, water quality parameters (such as pH, alkalinity, calcium, conductivity and temperature), and radioactivity. If contamination exists, the sources and duration of the contamination should be listed. Water quality data from nearby wells should be presented as well as any anticipated need for treatment or filtering systems. Discuss past and existing land uses within the likely wellhead protection area and the potential for future contamination from those uses.

The potential for contamination should be assessed based on geologic and hydrologic considerations. Although sources of contamination might be presently absent, vulnerability to contamination might be great, if contamination sources occur in the future, due to factors such as high rates of infiltration or thin, protective soil horizons.

Any hazardous materials used and/or produced during drilling and treatment should be described. The method of handling these hazardous materials should also be disclosed.

4. Hydrologic Impact Analysis

A description of the associated watershed and recharge area and a discussion of the potential effects the well development may have on affiliated groundwater and surface water (e.g., streams and wetlands). Relevant hydrologic, physical, chemical, and biological data for potentially affected waters should be included. If potential impacts exist, a monitoring program for the surface waters should be included.

NOTE: See appendix #2 for sample description.

The EA should include pump test data on water level, extraction rates, and water quality. Similar data from nearby wells should also be included. The precise criteria used to determine if the well should be converted to production should be described. Any provisions for future use and monitoring of wells not placed into production should also be described.

5. Biological Assessment

A floral and faunal survey for sites in biologically sensitive areas.

6. Archaeological and Cultural Impact Assessment

A description of the archaeological and cultural significance of the region, including an on-site survey as well as consultations with Native Hawaiian groups such as DHHL, OHA and local community associations. (If applicable, the Environmental Council's Guidelines for Assessing Cultural Impacts could be used for this purpose.)

7. Financial and Institutional Arrangements

In some instances, a well is developed by private financing, the transfer of public lands to government or private developers, or in return for a water allocation credit to supply an urban development. The EA should include a full discussion of any institutional, financial or land use arrangements or commitments related to developing the well and delivering water to end users.

These arrangements may include the formation of public utility companies and subsequent rate-setting, the establishment of county water commitments, the co-funding of state or county water system development, an executive order or other set-aside of state lands, and purchase of land or easements by public entities.

Any or all of these arrangements and all permits or governmental approvals required to fulfill these commitments should be listed.

8. Watershed and Land Use Analysis

A discussion of how waters from the well will be used, and an analysis of how the proposed well development may affect land and water uses on the island and in the region. The analysis should include a discussion of the following (published materials may be referenced):

- * Hawaii State Water Plan and its component parts
- * County General, Development, and/or Community Plans
- * Plans for future water development within the aquifer
- * Any related water, wastewater, drainage or erosion control plans
- * Historical water supply and demand figures for the region
- * How the well may affect existing water sources
- * Any secondary or cumulative impacts caused by promoting land uses that alter the hydrology of the source and/or end-use area
- * An assessment of the well's impact on the land owners, water users including farmers and kuleana residents in the region and a declaration if ceded lands are involved.

9. Alternative Analysis

A list of alternatives to new groundwater development and discussion of their related costs and benefits. The list should include but not be limited to alternative locations, wastewater reuse, rainfall catchment, existing potable and non-potable water supplies, water conservation and Demand Side Management or Integrated Resources Planning. Show why developing a new source is more cost efficient than water conservation programs (slow-flow and low-flush retrofits, leak detection, etc.). In the case of back-up wells, there should be a discussion of the feasibility of providing a back-up pump only, rather than drilling a second well.

10. Impacts of Accessory Facilities

A description of impacts associated with the well's permanent production facilities including pumps, distribution pipelines, control devices, storage facilities, access roads and accessory structures.

The inclusion of this information will help make environmental assessments and environmental impact statements complete. If you have any questions, please call OEQC at 586-4185.

Appendix #1

FORMAT SUGGESTIONS AND SAMPLE TABLES AND CHARTS TO DISPLAY SUSTAINABLE YIELD DATA.

Sustainable Yield

Sustainable yield policies for basal aquifers involve trade-offs between groundwater extraction rates and aquifer water levels. The selected extraction rate implies acceptance of the affiliated equilibrium head (h_e), the water level at which the aquifer stabilizes under pumping at sustainable yield levels.

Equilibrium head is usually less than pre-development water levels or initial head (h_i). For comparative purposes, it is helpful to attach values of h_e and h_i to sustainable yield figures. Groundwater extraction can then be discussed in terms of its relationships with sustainable yields and water levels.

Data Subtotals and Grouping

To assure the clarity of information presented in the EA, tables for the following categories of data should be grouped by user/operator and landowner.

Categories for Data Tables in the EA

- * Current water use totals
- * Current installed capacity
- * Pending installed capacity
- * Authorized water use

To assist in spatial analysis, subtotals should also be grouped for aquifer sub areas and/or water quality regimes (such as zones of varying recharge of extraction intensity or chloride concentration).

A sample table for the display of this data is presented in the next page.

Aquifer or Hydrologic Unit Status Data

Sustainable Yield = 40 mgd

Initial head = 20 feet

Equilibrium head = 18 feet

Authorized Water Use (for water management areas only) = 36 mgd

Table 1: Overall Aquifer or Hydrologic Unit Status Data in million gallons per day

Land Owner	Authorized Water Use (Permitted by CWRM)	Existing (E)		Planned/Pending (P)		Potential Future (E + P)	
		Pump Capacity*	Average Use **	Pump Capacity	Proposed Use	Pump Capacity	Proposed Use
A	4	5	4	+5	+4	10	8
B	7	10	7	+3	+2	13	9
C	25	25	15	-10	-5	15	10
Total	36	40	26	-2	+1	38	27

Table 2: Aquifer or Hydrologic Unit Status Data for Landowner C in million gallons per day

Well Site	Authorized Water Use (Permitted by CWRM)	Existing (E)		Planned/Pending (P)		Potential Future (E + P)	
		Pump Capacity	Average Use	Pump Capacity	Proposed Use	Pump Capacity	Proposed Use
Mauka	10	10	8	0	0	10	8
Makai	5	5	0	-5	0	0	0
Central	10	10	7	-5	-5	5	2
Total	25	25	15	-10	-5	15	10

Notes:

* Total amount of water a well pump is capable of removing from the ground under ideal conditions in a 24-hour period. This number should be the same as the “rated pump capacity or installed pump capacity” as reported by the well owner to the CWRM.

** Average water use based upon water meter readings as reported by the well owner to the CWRM. The average should be based on the appropriate number of years of data.

Appendix #2

SAMPLE DESCRIPTION LIST FOR THE AFFECTED SECTOR WITHIN A WATERSHED AND GROUNDWATER RECHARGE AREA

Below you will find a list of characteristics that should be discussed in the description of affected sector within a watershed and groundwater recharge area.

Watershed:

1. Drainage area boundaries
2. Drainage networks and patterns
3. Groundwater discharges as sources of surface water flows
4. Surface water flow and habitat characteristics
 - a. timing, magnitude, duration, frequency of groundwater-source baseflows
 - b. relationships between baseflows and aquatic and riparian habitats and communities,
- c. water quality
- d. water uses (e.g., ditch or ‘auwai systems)

Recharge Area:

1. Boundaries
2. Geologic structure
3. Groundwater flow patterns
4. Overlying land and water uses, and runoff patterns.
5. Relationships between recharge rates and patterns, and climatic variations
6. Relationships between proposed groundwater extraction and associated activities, and aquifer water levels
7. Storage volumes, other wells, discharges to surface and coastal waters, and water quality parameters

Appendix #3

SOURCES OF INFORMATION

1) Hydrologic information may be obtained from the Commission on Water Resources Management. These include:

- a) location of existing wells;
- b) CWRM aquifer boundary;
- c) information on nearby streams;
- d) sustainable yield for aquifer;
- e) authorized water use by CWRM (for water management areas only);
- f) current water use within aquifer;
- g) current installed capacity within aquifer;
- h) pending installed capacity and water use within aquifer;
- i) Hawaii State Water Plan and its component parts;
- j) water levels of nearby wells; and
- k) salinity levels of nearby wells.

2) Contamination information may be obtained from the Department of Health. These include:

Safe Drinking Water Branch

- a) results of water quality tests of nearby wells;
- b) records of contamination problems in the aquifer; and
- c) locations of drywells and injection wells.

Wastewater Branch

- a) locations of individual wastewater systems.

Solid and Hazardous Waste Branch

- a) location of hazardous waste sites; and
- b) location of landfills.

3) Preliminary information about the well head protection area may be obtained from the Safe Drinking Water Branch, Department of Health.

4) Information about wetlands may be obtained from the U.S. Army Corps of Engineers.

5) County general, development and community plans may be obtained from the respective planning departments.

April 11, 2013.
This Guide is obsolete.
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Appendix H: FORMS

This chapter contains forms which you will need for preparing or submitting a Chapter 343 document:

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DRAFT & FINAL ENVIRONMENTAL ASSESSMENT CHECKLIST

Title: _____

DRAFT ENVIRONMENTAL ASSESSMENT

Document received _____

DEA placed in nearest public library? _____

Conditions which triggered the EIS Law. Check all that apply:

- Use of State or County Land or Funds
- Amendment to a County General Plan
- Use of Conservation District Lands
- Reclassification of Lands from Conservation to Urban
- Use of Shoreline Setback Area
- Construction or Modif. of Helicopter Facilities
- Use of Historic Site or District
- Use of lands in the Waikiki Special District
- Other

Comments/Recommendation/Justification:

APPROVED FOR PUBLICATION: (sign) _____

DATE OF PUBLICATION: _____

DRAFT EA COMMENT DEADLINE: _____

FINAL ENVIRONMENTAL ASSESSMENT (FONSI)

Comments/Recommendation/Justification:

APPROVED FOR PUBLICATION: (sign) _____

DATE OF PUBLICATION: _____

DRAFT ENVIRONMENTAL ASSESSMENT

- _____ (1) Agency submittal letter and anticipated determination;
- _____ (2) Identification of applicant or proposing agency;
- _____ (3) Identification of approving agency, if applicable;
- _____ (4) Identification of agencies, citizen groups, and individuals consulted in making the assessment;
- _____ (5) General description of the action's technical, economic, social, and environmental characteristics; time frame; funding/source
- _____ (6) Summary description of the affected environment, including suitable and adequate regional, location and site maps such as Flood Insurance Rate Maps, Floodway Boundary Maps, or United States Geological Survey topographic maps;
- _____ (7) Impacts to cultural practices and resources, past and current (Act 50)
- _____ (8) Identification and summary of impacts and proposed mitigation measures;
- _____ (9) Alternatives considered;
- _____ (10) Discussion of findings and reasons supporting the agency anticipated determination;
- _____ (11) List of all required permits and approvals (State, federal, county);
- _____ (12) Written comments and responses to the comments under the early consultation provisions of sections 11-200-9(a)(1), 11-200-9(b)(1), or 11-200-15.

FINAL ENVIRONMENTAL ASSESSMENT

- _____ (13) **Agency submittal letter;**
- _____ (14) **Agency determination;**
- _____ (15) **Discussion of findings and reasons supporting the agency determination;**
- _____ (16) **Written comments and responses to the comments under the statutorily prescribed public review periods.**

ENVIRONMENTAL IMPACT STATEMENT PREPARATION NOTICE CHECKLIST

Title: _____

Document received by deadline? ____

Conditions which triggered the EIS Law. Check all that apply:

- ___ Use of State or County Land or Funds
- ___ Amendment to a County General Plan
- ___ Use of Conservation District Lands
- ___ Reclassification of Conservation Lands
- ___ Use of Shoreline Setback Area
- ___ Construction or Modif. of Helicopter Facilities
- ___ Use of Historic Site or District
- ___ Use of lands in the Waikiki Special District
- ___ Other

Comments/Recommendation/Justification:

APPROVED FOR PUBLICATION: (sign) _____

DATE OF PUBLICATION: _____

EISPN COMMENT DEADLINE: _____

April 11, 2013.
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- ___ (1) Agency submittal letter and determination;
- ___ (2) Identification of applicant or proposing agency;
- ___ (3) Identification of accepting authority;
- ___ (4) Identification of agencies, citizen groups, and individuals consulted in making the assessment;
 - ___ Was applicable county planning office notified of project?
 - ___ Is the project in the Conservation District, Special Management Area, Shoreline Setback?
 - ___ List of all required permits and approvals (State, federal, county)
- ___ (5) General description of the action's technical, economic, social, and environmental characteristics; time frame; funding/source
- ___ (6) Summary description of the affected environment, including suitable and adequate regional, location and site maps such as Flood Insurance Rate Maps, Floodway Boundary Maps, or United States Geological Survey topographic maps;
 - ___ Is the project located in an environmentally sensitive zone?
- ___ (7) Identification and summary of impacts and proposed mitigation measures;
 - Short Term (construction impacts):
 - Long Term significant effect on water, air, archaeological and historic district/sites, or flora and fauna resources; noise, traffic, and visual impacts.
- ___ (8) Impacts to cultural practices and resources, past and current
- ___ (9) Alternatives considered;
- ___ (10) Discussion of findings and reasons supporting the agency determination;
- ___ (11) Written comments and responses to the comments under the early consultation provisions of sections 11-200-9(a)(1), 11-200-9(b)(1), or 11-200-15.
- ___ (12) Agencies and community groups to be consulted during the EIS process.

DRAFT & FINAL EIS CHECKLIST

DOCUMENT TITLE: _____

Content requirements: draft environmental impact statement.

- ___ 1. table of contents.
- ___ 2. summary sheet which concisely discusses the following:
 - ___ Brief description of the action
 - ___ Significant beneficial and adverse impacts
 - ___ Proposed mitigation measures
 - ___ Alternatives considered
 - ___ Unresolved issues
 - ___ Compatibility with land use plans and policies
 - ___ listing of permits or approvals
- ___ 3. purpose of and need for the project
- ___ 4. project description which shall include the following:
 - ___ A map
 - ___ Statement of objectives
 - ___ General description of the action
 - ___ Use of public funds or lands
 - ___ Phasing and timing of action
 - ___ Summary technical data, diagrams
 - ___ Historic perspective
- ___ 5. alternatives
 - ___ rigorous exploration and objective evaluation of the environmental impacts
 - ___ comparative evaluation of the environmental benefits, costs, of the proposed action and each alternative.
 - ___ explain why they were rejected
- ___ 6. environmental setting
 - ___ local and regional perspective
 - ___ environmental resources that are rare or unique
 - ___ reference to related projects, public and private, existent or planned in the region
 - ___ population and growth characteristics, population and growth assumptions used to justify the action
- ___ 7. relationship to land use plans, policies, and controls
 - ___ Where a conflict or inconsistency exists, reasons why the agency or applicant has decided to proceed
 - ___ list and status of necessary approvals
- ___ 8. probable impact
 - ___ impacts of the natural or human environment on the project
 - ___ direct and indirect effects
 - ___ cumulative environmental impacts of the proposed action and other related projects
 - ___ population and growth impacts of an action
 - ___ impacts to cultural practices and resources, past and current (Act 50)

- ___ 9. relationship between local short-term uses of humanity's environment and the maintenance of long-term productivity
- ___ 10. description of irreversible and irretrievable commitments of resources
- ___ 11. addresses all probable adverse environmental effects which cannot be avoided.
- ___ 12. mitigation measures proposed to avoid, minimize, reduce impact
 - ___ measures to reduce impacts to insignificant levels, and the basis for considering these levels acceptable
- ___ 13. summary of unresolved issues
 - ___ discussion of how such issues will be resolved or overriding reasons given for proceeding
- ___ 14. list identifying all consulted parties
- ___ 15. identity of all persons, firms, or agency preparing the statement
- ___ 16. reproduction of all substantive comments and responses made during the consultation process
- ___ 17. The applicant shall sign the draft EIS and shall indicate that documents were prepared under the signatory's direction

Content requirements; final environmental impact statement.

- ___ 1. The draft EIS revised to incorporate substantive comments received during the consultation and review processes;
- ___ 2. Reproduction of all letters received containing substantive comments and, as applicable, summaries of any scoping meetings
- ___ 3. A list of persons, organizations, and public agencies commenting on the draft EIS;
- ___ 4. The responses of the applicant to each substantive comment
- ___ 5. The response to comments shall include:
 - ___ Point-by-point discussion of the validity, significance, and relevance of comments; and
 - ___ Discussion as to how each comment was evaluated and considered in planning the proposed action.
 - ___ Response letters reproduced in the final EIS shall indicate verbatim changes that have been made to the draft EIS.
 - ___ Reasons why specific comments were not accepted, and factors of overriding importance warranting an override
- ___ 6. The reader can easily distinguish changes made to the draft EIS.
- ___ 7. The applicant shall sign the final EIS and shall indicate that documents were prepared under the signatory's direction

SUBMISSION PROCESS

DRAFT AND FINAL ENVIRONMENTAL IMPACT STATEMENTS

Prior to the distribution of the Environmental Impact Statements, have the following delivered to the Office of Environmental Quality Control by the EIS submission deadline: (NOTE: each item is explained in detail below. Copies of forms and sample letters can be found in the Guidebook or on the OEQC website.)

1. Four copies of the Draft or Final Environmental Impact Statement
2. An agency transmittal letter to OEQC requesting publication
The letter should list the contact person, telephone number and the tentative date of distribution.
3. Completed OEQC Bulletin Publication Form and submission of the project summary in electronic form;
4. Completed Draft EIS Distribution Cover Letter to participants, or completed Final EIS Distribution Cover Letter to participants;
5. Completed Draft EIS Distribution List containing the agencies which receive copies of the Draft EIS, or completed Final EIS Distribution List containing the agencies which receive copies of the Final EIS.

Notes on above items:

1. *Four (4) copies of the Draft or Final EIS:* In addition, a 5th copy is mailed to OEQC at the same time general distribution is made to ensure timely delivery to all parties.
2. *Agency transmittal letter:* An agency letter to OEQC is required with the contact person and telephone number listed along with the tentative date of distribution.
3. *Completed OEQC Bulletin Publication Form:* Fill out the form completely. If you are unsure how to complete any of the items call OEQC for guidance. Submit the project summary on diskette or by e-mail. (If the project summary has not changed between the draft and the final EIS submissions, the electronic submission may be omitted.)
4. *Copy of the completed Draft or Final EIS Distribution Cover Letter to participants:* All information on this sheet must be accurate. A copy of this Cover Letter must accompany each document distributed.

Note: Deadline for comments for the Draft EIS is 45 days from the date of publication in *The Environmental Notice*. Use the deadline found on our Calendar of Submission Deadlines or contact OEQC to verify the date. The Final EIS has no deadline because the law does not provide for a comment period.

Note: It is important that a contact person be named; otherwise this may delay the general distribution of the document.

5. *Copy of the completed Draft or Final EIS Distribution List:* Using a copy of the document distribution chart, place a check mark next to the name of each recipient receiving the EIS. This can be done for both the draft and final EIS distribution lists. **Remember that distribution cannot take place until OEQC has verified the accuracy of each distribution list.**

OEQC will review the submitted Distribution Lists and Cover Letters and call the contact person to verify that the information submitted is complete and correct. OEQC will verbally confirm the acceptance of the distribution list and will follow-up with a letter stating this confirmation, either by mail or by fax. After verbal confirmation, the agency or applicant may distribute the document.

State and County Messenger Services may only be used for the distribution of EISs on Oahu. All neighbor island EISs must be mailed. State Agencies on Oahu may use the State Messenger Service. Consultants hired by State Agencies may also utilize the State Messenger Service using the agency's name. County Agencies may use their Messenger Service as usual. First Class postage is required for all EISs which are mailed.

- a. Note: For Agencies and Libraries with "number of copies" pre-printed on the Document Distribution chart, this is the required number they are to receive of each document.
- b. Please send copies of the EIS to applicable County Agencies and Libraries for projects in the Agency's or Library's respective County or District.

April 11, 2013.
This Guide is obsolete.
Use only for historical purposes.

SAMPLE SUBMITTAL LETTERS FOR DRAFT AND FINAL EAs

Draft EA

Agency letterhead
(Date)

Ms. Genevieve Salmonson, Director
Office of Environmental Quality Control
235 South Beretania Street, Suite 702
Honolulu, Hawaii 96813

Dear Ms. Salmonson,

Subject: Draft Environmental Assessment (DEA) for *Project Name*, TMK X-XXX-X, *town name & island*.

Agency name has reviewed the draft environmental assessment for the subject project, and anticipates a Finding of No Significant Impact (FONSI) determination. Please publish notice of availability for this project in the “*next available*” or *issue date* Environmental Notice. We have enclosed a completed OEQC Publication Form, four copies of the draft EA, and the project summary on disk. Please call *contact person* at *phone number* if you have any questions.

Sincerely,
signed by agency official

Final EAs

on agency letterhead -- to same address as above

Dear Ms. Salmonson:

Subject: Finding of No Significant Impact (FONSI) for *Project Name*, TMK X-XXX-X, *town name & island*

The *agency name* has reviewed the comments received during the 30-day public comment period which began on *publication date*. The agency has determined that this project will not have significant environmental effects and has issued a FONSI. Please publish this notice in the “*next available*” or *issue date* Environmental Notice.

We have enclosed a completed OEQC Publication Form and four copies of the final EA. Please call *contact person* at *phone number* if you have any questions.

Sincerely,
signed by agency official

Note: Even if no comments were received and no changes were made to the document, the agency must submit four copies of the final EA along with a determination letter; Submission of project summary on disk is not necessary if there were no changes to DEA project description.

SAMPLE COVER LETTER FOR SUBMISSION OF DRAFT EIS

[AGENCY LETTERHEAD]

[date]

Honorable Genevieve Salmonson, Director
Office of Environmental Quality Control
235 South Beretania Street, Room 702
Honolulu, Hawaii 96813

Dear Ms. Salmonson:

Draft Environmental Impact Statement for (Project Name and Location)

We respectfully request publication of the Draft Environmental Impact Statement (DEIS) in the (issue date, or “next available”) OEQC Environmental Notice. Attached please find the following items:

- Four copies of the DEIS
- Completed publication form
- Completed DEIS Distribution Cover Letter to the participants
- Completed DEIS Distribution List

If you have any questions regarding the DEIS, please call (Name) of our staff at (phone #) or (other contact) at (phone #).

Sincerely,
signed by agency official

SAMPLE DRAFT EIS COVER LETTER TO PARTICIPANTS

[AGENCY/APPLICANT LETTERHEAD]

(Date)

Dear Participant:

Attached for your review is a Draft Environmental Impact Statement (DEIS) which was prepared pursuant to the EIS law (Hawaii Revised Statutes, Chapter 343) and the EIS rules (Administrative Rules, Title 11, Chapter 200).

TITLE OF PROJECT: _____

LOCATION: (island) _____ (district) _____

TAX MAP KEY NUMBERS: _____

AGENCY ACTION: ____ or APPLICANT ACTION: ____

YOUR COMMENTS MUST BE RECEIVED OR POSTMARKED BY: _____
(minimum 45 day comment period):

Please send original comments to the applicant: _____

Address: _____

Contact: _____ Phone: _____

Copies of the comments should be sent to OEQC and to the accepting authority:

Address: _____

Contact: _____ Phone: _____

Consultant: _____ Phone: _____

Address: _____

Contact: _____ Phone: _____

If you no longer need this EIS, please recycle it. Thank you for your participation in the EIS process!

April 11, 2013.
This Guide is obsolete.
Use only for historical purposes.

SAMPLE COVER LETTER FOR SUBMISSION OF FINAL EIS

[AGENCY LETTERHEAD]

[date]

Honorable Genevieve Salmonson, Director
Office of Environmental Quality Control
235 South Beretania Street, Room 702
Honolulu, Hawaii 96813

Dear Ms. Salmonson:

Final Environmental Impact Statement for (Project Name and Location)

We respectfully request publication of the Final Environmental Impact Statement (DEIS) in the (issue date, or “next available”) OEQC Environmental Notice. Attached please find the following items:

- Four copies of the FEIS
- Completed publication form
- Completed FEIS Distribution Cover Letter to the participants
- Completed FEIS Distribution List

If you have any questions regarding the FEIS, please call (Name) of our staff at (phone #) or (other contact) at (phone #).

Sincerely,
signed by agency official

SAMPLE FINAL EIS COVER LETTER TO PARTICIPANTS

[AGENCY/APPLICANT LETTERHEAD]

(Date)

Dear Participant:

Attached for your review is a Final Environmental Impact Statement (FEIS) which was prepared pursuant to the EIS law (Hawaii Revised Statutes, Chapter 343) and the EIS rules (Hawaii Administrative Rules, Title 11, Chapter 200).

TITLE OF PROJECT: _____

LOCATION: (island) _____ (district) _____

TAX MAP KEY NUMBERS: _____

AGENCY ACTION: ____ or APPLICANT ACTION: ____

Accepting Authority: _____
Address: _____

Contact: _____ Phone: _____

Proposing Agency or Applicant: _____

Address: _____

Contact: _____ Phone: _____

Consultant: _____ Phone: _____

Address: _____

Contact: _____ Phone: _____

If you no longer need this EIS, please recycle it. Thank you for your participation in the EIS process!

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AGENCY & COMMUNITY GROUPS MAILING LIST

agency names and addresses are subject to change

Oahu

Dept. of Agriculture 1428 South King Street Honolulu, HI 96814	Manager, EPA -- PICO 300 Ala Moana Blvd., Rm. 1302 Honolulu, HI 96850	Dept. of Parks & Recreation 650 South King Street Honolulu, HI 96813
Dept. of Accounting & Gen. Services. P.O. Box 119 Honolulu, HI 96810	Directorate of Public Works U.S. Army Garrison, HI Attn: Environmental Division Schofield Barracks, HI 96857-5013	Dept. of Facility Maintenance 650 South King Street Honolulu, HI 96813
Dept. of Defense 3949 Diamond Head Road Honolulu, HI 96816-4495	Commander, Naval Base, P.H. Attn: Base Civil Engineer, Box 110 Pearl Harbor, HI 96860-5020	Dept. of Transportation Services 650 South King Street Honolulu, HI 96813
Superintendent, Dept. of Education P.O. Box 2360 Honolulu, HI 96804	State Conservationist, USDA Resources Conservation Service P.O. Box 50004 Honolulu, HI 96850	Chief, Honolulu Fire Dept. 3375 Koapaka St., Suite H425 Honolulu, HI 96819
Chairman, Dept. Hawaiian Home Lands P.O. Box 1879 Honolulu, HI 96805	U.S. Army Corps of Engineers Pacific Ocean Division Building 230 Fort Shafter, HI 96858-5440	Library, Dept. of Customer Services City Hall Annex Honolulu, HI 96813
Dept. of Health, Env. Planning Office P.O. Box 3378 Honolulu, HI 96801	U.S. Coast Guard, 14th C. G. District 300 Ala Moana Boulevard Honolulu, HI 96850	Chief, Honolulu Police Dept. 801 South Beretania Street Honolulu, HI 96813
Dept. of Land & Natural Resources P.O. Box 621 Honolulu, HI 96809	Pacific Islands Administrator Fish & Wildlife Svc., Dept. Interior 300 Ala Moana Blvd., Rm. 3108 Honolulu, HI 96813	Dir., Environmental Health American Lung Association 245 North Kukui Street Honolulu, HI 96817
State Historic Preservation Officer Dept. of Land & Natural Resources 601 Kamokila Blvd., Rm. 555 Kapolei, HI 96707	District Chief, Dept. of the Interior US Geological Survey 677 Ala Moana Boulevard, Rm. 415 Honolulu, HI 96813-5412	Hawaiian Electric Company P.O. Box 2750 Honolulu, HI 96740
Dept. Business, Econ. Dev. & Tourism P.O. Box 2359 Honolulu, HI 96804	City Editor, Hon. Star Bulletin 500 Ala Moana Blvd., Ste 7-500 Honolulu, HI 96813	Office of Hawaiian Affairs 711 Kapiolani Boulevard, Suite 1250 Honolulu, HI 96813
Dept. Business, Econ. Dev. & Tourism Energy, Resources & Tech. Division 235 South Beretania Street, 5 th fl. Honolulu, HI 96813	Editor, Hon. Advertiser P.O. Box 31000 Honolulu, HI 96849	Hamilton Library, Hawn. Collection UHM, 2550 The Mall Honolulu, HI 96822
Housing Finance & Development Corp. 677 Queen, Suite 300 Honolulu, HI 96813	Editor, Sun Press 45-525 Luluku Road Kaneohe, HI 96744	Legislative Reference Bureau State Capitol, Room 004 Honolulu, HI 96813
Dept. of Transportation 869 Punchbowl Street Honolulu, HI 96813	Chief Eng., Board of Water Supply 630 South Beretania Street Honolulu, HI 96813	
Office of Planning 235 South Beretania Street, 6 th fl. Honolulu, HI 96813	Dept. of Environmental Services 650 South King Street Honolulu, HI 96813	
UHM Environmental Center 2500 Dole, Krauss Annex 19 Honolulu, HI 96822	Dept. of Design & Construction 650 South King Street Honolulu, HI 96813	
UHM Marine Programs 1000 Pope Road, Room 229 Honolulu, HI 96822	Dept. of Community Services 715 South King St., Ste. 311 Honolulu, HI 96813	
UHM Water Res. Research Ctr 2540 Dole Street, Room 283 Honolulu, HI 96822	Chief Planning Officer Dept. of Planning & Permitting 650 South King Street Honolulu, HI 96813	
Natl. Marine Fisheries Service 2570 Dole St. Honolulu, HI 96822		

Hawaii County

HI County Planning Dept.
25 Aupuni Street
Hilo, HI 96720

HI Co. Dept. of Research & Dev.
25 Aupuni Street
Hilo, HI 96720

Editor, Hawaii Tribune Herald
355 Kinooles Street
Hilo, HI 96720

HI Co. Dept. of Parks & Rec.
25 Aupuni Street
Hilo, HI 96720

HI Co. Dept. of Water Supply
25 Aupuni Street
Hilo, HI 96720

Editor, West Hawaii Today
P.O. Box 789
Kailua-Kona, HI 96740

HI Co. Dept. of Public Works
25 Aupuni Street
Hilo, HI 96720

Librarian, UHH Library
P.O. Box 1357
Hilo, HI 96720

Maui County

Maui Dept. of Planning
200 South High Street
Wailuku, HI 96793

Maui Dept. of Water Supply
200 South High Street
Wailuku, HI 96793

Editor, Maui News
P.O. Box 550
Wailuku, HI 96793

Maui Dept. of Parks & Rec.
200 South High Street
Wailuku, HI 96793

Coordinator, Maui Econ. Dev. Agency
200 South High Street
Wailuku, HI 96793

Editor, Molokai Dispatch
P.O. Box 440
Kaunakakai, HI 96748

Maui Dept. of Public Works
200 South High Street
Wailuku, HI 96793

Maui Community College Library
310 Kaahumanu Avenue
Kahului, HI 96732

Kauai County

Kauai Dept. of Planning
4444 Rice Street
Lihue, HI 96766

Manager, Kauai Dept. of Water
3498 Pualoke Street
Lihue, HI 96766

Editor, The Garden Island
Newspaper
3137 Kuhio Highway
Lihue, HI 96766

County Engineer, Dept. of Public Works
4444 Rice Street
Lihue, HI 96766

Kauai Community College Library
3-1901 Kaunualii Highway
Lihue, HI 96766

[see also Public Libraries Distribution List]

2013.
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PUBLIC LIBRARIES DISTRIBUTION LIST

Oahu

Aiea Public Library
99-143 Moanalua Rd.
Aiea, HI 96701

Aina Haina Public Library
5246 Kalanianaʻole Highway
Honolulu, HI 96821

Ewa Beach Public & School Library
91-950 North Rd.
Ewa Beach, HI 96706

Hawaii Kai Public Library
249 Lunalilo Home Rd.
Honolulu, HI 96825

Hawaii State Library
Hawaii Documents Center
478 South King St.
Honolulu, HI 96813

Kahuku Public & School Library
P.O. Box 65
Kahuku, HI 96731

Kailua Public Library
239 Kuulei Rd.
Kailua, HI 96734

Kaimuki Public Library
1041 Koko Head Ave.
Honolulu, HI 96816

Kalihi-Palama Public Library
1325 Kalihi St.
Honolulu, HI 96819

Kaneohe Public Library
45-829 Kamehameha Highway
Kaneohe, HI 96744

Library for the Blind & Physically
Handicapped
402 Kapahulu Ave.
Honolulu, HI 96815

Liliha Public Library
1515 Liliha St.
Honolulu, HI 96817

Manoa Public Library
2716 Woodlawn Dr.
Honolulu, HI 96822

McCully-Moiliili Public Library
2211 South King St.
Honolulu, HI 96826

Mililani Public Library
95-450 Makaimoimo St.
Mililani, HI 96789

Pearl City Public Library
1138 Waimano Home Rd.
Pearl City, HI 96782

Salt Lake-Moanalua Public Lit
648 Ala Lili'koi St.
Honolulu, HI 96818

Wahiawa Public Library
820 California Ave.
Wahiawa, HI 96786

Waialua Public Library
67-068 Kealohanui St.
Waialua, HI 96792

Waianae Public Library
85-625 Farrington Highway
Waianae, HI 96792

Waikiki-Kapahulu Public Libra
400 Kapahulu Ave.
Honolulu, HI 96815

Waimanalo Public & School L
41-1320 Kalanianaʻole Highwa
Waimanalo, HI 96765

Waipahu Public Library
94-275 Mokuda St.
Waipahu, HI 96797

Hawaii

Bond Memorial Public Library
P.O. Box 248
Kapaa, HI 96755

Hilo Public Library
300 Waianuenue
Hilo, HI 96720

Holualoa Public Library
P.O. Box 214
Holualoa, HI 96725-0214

Honokaa Public Library
P.O. Box 236
Honokaa, HI 96727

Kailua-Kona Public Library
75-138 Hualalai Rd.
Kailua-Kona, HI 96740

Keaau Public & Schod Library
16-571 Keaau-Pahoa Rd.
Keaau, HI 96749

Kealahou Public Library
P.O. Box 768
Kealahou, HI 96750

Laupahoehoe Public & Schod Library
P.O. Box 249
Laupahoehoe, HI 96764

Mountain View Public & School Library
P.O. Box 380
Mountain View, HI 96771

Naalehu Public Library
P.O. Box 653
Naalehu, HI 96772

Pahala Public & Schod Library
P.O. Box 400
Pahala, HI 96777

Pahoa Public & Schod Library
15-3070 Pahoa-Kalapana Rd.
Pahoa, HI 96778

Thelma Parker Memorial Public &
School Library
67-1209 Mamalohoa Hwy
Kamuela, HI 96743-8429

Maui

Hana Public & School Library
P.O. Box 490
Hana, HI 96713

Kahului Public Library
90 School St.
Kahului, HI 96732

Kihei Public Library
35 Waimahaihai St.
Kihei, HI 96753

Lahaina Public Library
680 Wharf St.
Lahaina, HI 96761

Makawao Public Library
1159 Makawao Avenue
Makawao, HI 96768

Wailuku Public Library
251 High St.
Wailuku, HI 96793

Lanai

Lanai Public & School Library
P.O. Box 550
Lanai City, HI 96763

Kauai

Hanapepe Public Library
P.O. Box B
Hanapepe, HI 96716

Kapaa Public Library
1464 Kuhio Highway
Kapaa, HI 96746

Koloa Public & School Library
P.O. Box 9
Koloa, HI 96756

Lihue Public Library
4344 Hardy St.
Lihue, HI 96766

Princeville Library
4343 Emmalani Drive
Princeville, HI 96722

Waimea Public Library
P.O. Box 397
Waimea, HI 96796

Molokai

Molokai Public Library
P.O. Box 395
Kaunakakai, HI 96748

REGIONAL LIBRARIES

Hawaii Documents Center
Hawaii State Library
478 South King Street
Honolulu, HI 96813

Kaimuki Regional Library
1041 Koko Head Avenue
Honolulu, HI 96816

Kaneohe Regional Library
45-829 Kamehameha Highway
Kaneohe, HI 96744

Pearl City Regional Library
1138 Waimano Home Road
Pearl City, HI 96782

Hawaii Kai Regional Library
249 Lunalilo Home Road
Honolulu, HI 96825

Hilo Regional Library
300 Waianuenue
Hilo, HI 96720

Kahului Public Library
90 School St.
Kahului, HI 96732

Lihue Regional Library
4344 Hardy Street
Lihue, HI 96766

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DOCUMENT DISTRIBUTION CHART

Public and agency involvement is a cornerstone of the environmental review process. Community input ensures that impacts are not overlooked and gives the community a voice in the planning and decision-making process. Appropriate distribution of environmental documents is an important step towards successful public involvement.

The following table generally shows who should receive the respective environmental documents.

Distribution	Draft EA	FONSI	EISPN	Draft EIS	Final EIS
Accepting Authority	M	M	M	M	M
OEQC	M	M	M	M	M
Agencies having jurisdiction or expertise	M	M	M	M	M
Citizen groups and individuals that may be affected	M	O	M	M	O
Consulted parties	M	O	M	M	O
Nearest state library	M	O	R	M	M
Other public depositories and libraries	O	O	R	M	M

Key:

M = Mandatory

R = Recommended

O = Optional

(#) = Number of copies

The following distribution list includes the appropriate agencies, groups and individuals that should receive the respective environmental documents. This list is not meant to be comprehensive. Each action is unique in itself and may require consultation with other parties. For Draft and Final EISs, OEQC must approve the distribution list before agencies or applicants can send out the document.

Distribution	Draft EA	FONSI	EISPN	Draft EIS	Final EIS
Accepting Authority	M	M	M	M	M
OEQC	M (4)	M (4)	M (4)	M (5)	M (5)
State Agencies					
Hawaii Finance Development Corporation	O	O	O	O	O
State Department of Agriculture	O	O	O	M	O
State Department of Accounting and General Services	O	O	O	M	O
State Department of Business, Economic Development and Tourism	O	O	R	M	O
State DBEDT Energy, Resources & Technology Division	O	O	R	M	O
State DBEDT Planning Office	R	O	R	M	O
Department of Defense	O	O	O	M	O
State Department of Archives	O	O	O	O	O
State Department of Education	O	O	O	O	O
State Department of Hawaiian Homelands	O	O	O	M	O
State Department of Health	R (3)	O	R (3)	M (3)	O
State Department of Land and Natural Resources	R (5)	O	R (5)	M (5)	O
State DLNR Historic Preservation Division	R	O	R	M	O
State Department of Transportation	O	O	R	M	O
Office of Hawaiian Affairs	R	O	R	M	O
UH Environmental Center	O	O	R	M (4)	M (2)
UH Marine Programs	O	O	O	O	O
UH Water Resources Research Center	O	O	O	M	O
Federal Agencies					
US Geological Survey	O	O	O	O	O
US Fish and Wildlife Service	O	O	R	M	O
US National Marine Fisheries Service	O	O	O	R (2)	R (2)
US National Park Service	O	O	O	O	O
US Natural Resources Conservation Service	O	O	O	O	O
US Army Engineer Division	O	O	R	R	O

Distribution	Draft EA	FONSI	EISPN	Draft EIS	Final EIS
US Naval Base, Pearl Harbor	O	O	O	O	O
US Federal Aviation Administration	O	O	O	O	O
US Federal Highway Administration	O	O	O	O	O
US Coast Guard	O	O	O	O	O
US EPA - Pacific Islands Contact Office	O	O	O	O	O
City and County of Honolulu *					
Board of Water Supply	R	O	R	M	O
Department of Design & Construction	R	O	O	M	O
Fire Department	O	O	O	O	O
Department Community Services	O	O	O	O	O
Department of Planning & Permitting	M (5)	O	R (5)	M (5)	O
Department of Parks and Recreation	R	O	R	M	O
Police Department	O	O	O	O	O
Department of Facility Maintenance	R	O	R	M	O
Department of Transportation Services	O	O	R	M	O
Department of Environmental Services	O	O	R	M	O
County of Hawaii *					
Fire Department	O	O	O	O	O
Department of Parks and Recreation	R	O	O	M	O
Planning Department	M	O	R	M	O
Police Department	O	O	O	O	O
Department of Public Works	R	O	R	M	O
Department of Research and Development	O	O	O	O	O
Department of Water Supply	R	O	R	M	O
County of Kauai *					
Fire Department	O	O	O	O	O
Department of Planning	M	O	R	M	O
Police Department	O	O	O	O	O
Department of Public Works	R	O	R	M	O
Department of Transportation	O	O	O	O	O
Department of Water	R	O	R	M	O

Distribution	Draft EA	FONSI	EISPN	Draft EIS	Final EIS
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County of Maui *					
Department of Fire Control	O	O	O	O	O
Department of Human Services	O	O	O	O	O
Department of Parks and Recreation	R	O	R	R	O
Department of Planning	M	O	R	M	O
Police Department	O	O	O	O	O
Department of Public Works	R	O	R	M	O
Department of Water Supply	R	O	R	M	O
Libraries and Depositories					
Nearest State Library	M	O	R	M	M
State Main Library	O	O	O	M	M
Regional Libraries	O	O	O	M	M
DBEDT Library	O	O	O	M	M
UH Hamilton Library	O	O	O	M	M
Legislative Reference Bureau	O	O	O	M	M
Library, Honolulu Dept. of Customer Services (formerly Municipal Reference and Records Center) *	O	O	O	M	M
UH Hilo Library *	O	O	O	M	M
Maui Community College Library *	O	O	O	M	M
Kauai Community College Library *	O	O	O	M	M
News Media					
Honolulu Advertiser	O	O	R	M	M
Honolulu Star Bulletin	O	O	R	M	M
Hawaii Tribune Herald *	O	O	R	M	M
West Hawaii Today *	O	O	R	M	M
The Garden Island Newspaper *	O	O	R	M	M
Maui News *	O	O	R	M	M
Molokai Dispatch *	O	O	R	M	M

Distribution	Draft EA	FONSI	EISPN	Draft EIS	Final EIS
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Elected Officials					
US Senator	O	O	O	O	O
US Representative	O	O	O	O	O
State Senator	O	O	O	O	O
State Representative	O	O	O	O	O
County Councilmember	O	O	R	R	O
Neighborhood Board Chair	O	O	R	R	O
Local Utilities	O	O	O	O	O
Electric	O	O	O	O	O
Telephone	O	O	O	O	O
Gas	O	O	O	O	O
Citizen Groups, Individuals & Consulted Parties					

Key:
M = Mandatory
R = Recommended
O = Optional
(#) = Number of Copies
* = For actions in the respective county

For Draft and Final EISs, please put a check mark in the appropriate box to indicate whether the document will be sent to the respective party.

Draft EIS Distribution List Approved by OEQC on _____

Final EIS Distribution List Approved by OEQC on _____

OEQC BULLETIN PUBLICATION FORM

(See instructions that follow)

1. Project Name:
Type of Document (*check one*): Draft EA Final EA EIS prep notice draft EIS
 final EIS NEPA Other (explain):
check if applicable: revised document supplemental document
Legal Authority (*check one*): chapter 343 HRS Oahu SMA NEPA
Agency determination (*check one*): Anticipated FONSI FONSI FEIS acceptance
Applicable sections (*check all that apply*):
 use of state or county lands or funds use of land in the Waikiki district
 use of conservation district lands amendment to county general plan
 use of shoreline area reclassification of conservation lands
 use of historic site or district construction or modification of helicopter facilities
2. Island:
Judicial District:
Tax Map Key Number:
3. Applicant or proposing agency:
Address:

Contact: Phone:
Note for EAs: when the applicant is a state or county agency (“proposing agency”), the proposing agency and the approving agency are the same.
4. Approving Agency (EAs) or Accepting Authority (EISs):
Address:

Contact: Phone:
5. Consultant:
Address:

Contact: Phone:
6. Public Comment Deadline:
7. Permits required prior to implementation:
8. Project Summary (*name of file*):
(*not required for final documents if no change from the draft*)
9. Public Library Copy (*not required for final EAs*):
10. This form was prepared by: Phone:

This Guide is obsolete.
Use only for historical purposes.
April 11, 2013.

INSTRUCTIONS FOR COMPLETING OEQC BULLETIN PUBLICATION FORM

To ensure timely publication of notice, please follow these instructions.

- 1) Project Name: *Begin a with place, person or organization name. Keep the project name brief. (e.g. Kailua Baseyard)*
- 2) District: *List Judicial District(s), e.g. Honolulu, Koolaupoko, Ewa (call OEQC at 586-4185 if you need assistance)*
- 4) Approving Agency: *Note that for state and county submissions, the proposing agency and approving agency are the same.*
- 7) List of Permits: *e.g. NPDES, Building, CDUA, SMA, Grading*
- 8) Project Summary: *The summary must be on disk or by email and in hardcopy. The summary should be brief (250 words or less) and should convey the full impact of the proposed action. List neighborhood name, describe project, and disclose major impacts and mitigation measures. Also on disk include items 1 through 7 (Project Name etc.). The project summary may be e-mailed to <oeqc@mail.health.state.hi.us>. (If the project summary is the same as in the draft document, a submission is not required.)*
- 9) Library Copy: *Draft EAs must be deposited at the public library nearest to the project site. Indicate the library name and date of deposit. This is not required for final EAs.*
- 10) Prepared by: *Indicate the name and phone number of the preparer of this form.*

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Appendix I: HAWAII'S ENVIRONMENTAL REVIEW LAWS, RULES AND POLICIES

HAR 11-200, HRS 343 (p. 117), HRS 341 (p. 126) and Act 50 (p. 130) are in this section

Unofficial version

HAWAII ADMINISTRATIVE RULES, TITLE 11, DEPARTMENT OF HEALTH, CHAPTER 200

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Historical Note: Chapter 11-200, Hawaii Administrative Rules, is based substantially on the Environmental Impact Statement Regulations of the Environmental Quality Commission. [Eff 6/2/75; R 12/6/85]

SUBCHAPTER 1
PURPOSE

§11-200-1 Purpose. Chapter 343, HRS, establishes a system of environmental review at the state and county levels which shall ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations. The purpose of this chapter is to provide agencies and persons with procedures, specifications of contents of environmental assessments and environmental impact statements, and criteria and definitions of statewide application. [Eff 12/6/85; am and comp Aug 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-1, 343-6)

SUBCHAPTER 2
DEFINITIONS AND TERMINOLOGY

§11-200-2 Definitions and terminology. As used in this chapter:

“Acceptance” means a formal determination of acceptability that the document required to be filed pursuant to chapter 343, HRS, fulfills the definitions and requirements of an environmental impact statement, adequately describes identifiable environmental impacts, and satisfactorily responds to comments received during the review of the statement. Acceptance does not mean that the action is environmentally sound or unsound, but only that the document complies with chapter 343, HRS, and this chapter. A determination of acceptance is required prior to implementing or approving the action.

“Accepting authority” means the final official or agency that determines the acceptability of the EIS document.

“Action” means any program or project to be initiated by an agency or applicant.

“Addendum” means an attachment to a draft environmental assessment or draft environmental impact statement, prepared at the discretion of the proposing agency or approving agency, and distinct from a supplemental statement, for the purpose of disclosing and addressing clerical errors such as inadvertent omissions, corrections, or clarifications to information already contained in the draft environmental assessment or the draft environmental impact statement already filed with the office.

“Agency” means any department, office, board, or commission of the state or county government which is part of the executive branch of that government.

“Applicant” means any person who, pursuant to statute, ordinance, or rule, officially requests approval from an agency for a proposed action.

“Approval” means a discretionary consent required from an agency prior to actual implementation of an action. Discretionary consent means a consent, sanction, or recommendation from an agency for which judgment and free will may be exercised by the issuing agency, as distinguished from a ministerial consent. Ministerial consent means a consent, sanction, or recommendation from an agency upon a given set of facts, as prescribed by law or rule without the use of judgment or discretion.

“Approving agency” means an agency that issues an approval prior to actual implementation of an action.

“Council” or “EC” means the environmental council.

“Cumulative impact” means the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

“Draft environmental assessment” means the environmental assessment submitted by a proposing agency or an approving agency for public review and comment when that agency anticipates a negative declaration determination.

“Effects” or “impacts” as used in this chapter are synonymous. Effects may include ecological effects (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic effects, historic effects, cultural effects, economic effects, social effects, or health effects, whether primary, secondary, or cumulative. Effects may also include those effects resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

“Emergency action” means an action to prevent or mitigate loss or damage to life, health, property, or essential public services in response to a sudden unexpected occurrence demanding such immediate action.

“Environment” means humanity’s surroundings, inclusive of all the physical, economic, cultural, and social conditions that exist within the area affected by a proposed action, including land, human and animal communities, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

“Environmental assessment” means a written evaluation to determine whether an action may have a significant environmental effect.

“Environmental impact” means an effect of any kind, whether immediate or delayed, on any component of the environment.

“Environmental impact statement”, “statement”, or “EIS” means an informational document prepared in compliance with chapter 343, HRS, and this chapter and which fully complies with subchapter 7 of this chapter. The initial statement filed for public review shall be referred to as the draft environmental impact statement and shall be distinguished from the final environmental impact statement which is the document that has incorporated the public’s comments and the responses to those comments. The final environmental impact statement is the document that shall be evaluated for acceptability by the respective accepting authority.

“Exempt classes of action” means exceptions from the requirements of chapter 343, HRS, to prepare environmental assessments, for a class of actions, based on a determination by the proposing agency or approving agency that the class of actions will probably have a minimal or no significant effect on the environment.

“Exemption notice” means a brief notice kept on file by the proposing agency, in the case of a public action, or the agency with the power of approval, in the case of a private action, when it has determined that the proposed project is an exempt or emergency project.

“Final environmental assessment” means either the environmental assessment submitted by a proposing agency or an approving agency following the public review and comment period for the draft environmental assessment and in support of either a negative declaration or a preparation notice determination; or the environmental assessment submitted by a proposing agency or an approving agency subject to a public consultation period when such an agency clearly determines at the outset that the proposed action may have a significant effect and hence will require the preparation of a statement.

“Issue date” means the date imprinted on the periodic bulletin required by section 343-3, HRS.

“National Environmental Policy Act” means the National Environmental Policy Act of 1969, Public Law 91-190, 42 U.S.C. §§4321-4347, as amended.

“Negative declaration” or “finding of no significant impact” means a determination by an agency based on an environmental assessment that a given action not otherwise exempt does not have a significant effect on the environment and therefore does not require the preparation of an EIS. A negative declaration is required prior to implementing or approving the action.

“Office” means the office of environmental quality control.

“Periodic bulletin” means the document required by section 343-3, HRS, and published by the office.

“Person” includes any individual, partnership, firm, association, trust, estate, private corporation, or other legal entity other than an agency.

“Preparation notice” or “EIS preparation notice” means a determination based on an environmental assessment that the subject action may have a significant effect on the environment and, therefore, will require the preparation of an environmental impact statement.

“Primary impact” or “primary effect” or “direct impact” or “direct effect” means effects which are caused by the action and occur at the same time and place.

“Secondary impact” or “secondary effect” or “indirect impact” or “indirect effect” means effects which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

“Significant effect” or “significant impact” means the sum of effects on the quality of the environment, including actions that irrevocably commit a natural resource, curtail the range of beneficial uses of the environment, are contrary to the state’s environmental policies or long-term environmental goals and guidelines as established by law, or adversely affect the economic or social welfare, or are otherwise set forth in section 11-200-12 of this chapter.

“Supplemental statement” means an additional environmental impact statement prepared for an action for which a statement was previously accepted, but which has since changed substantively in size, scope, intensity, use, location, or timing, among other things. [Eff 12/6/85; am and comp Aug 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-2, 343-6)

SUBCHAPTER 3 PERIODIC BULLETIN

§11-200-3 Periodic bulletin. (a) The office shall inform the public through the publication of a periodic bulletin of the following:

- (1) Notices filed by agencies of the availability of environmental assessments and appropriate addendum documents for review and comments;
- (2) Notices filed by agencies of determinations that statements are required or not required;
- (3) The availability of statements, supplemental statements and appropriate addendum documents for review and comments;
- (4) The acceptance or non-acceptance of statements; and
- (5) Other notices required by the rules of the council.

(b) The bulletin shall be made available to any person upon request. Copies of the bulletin shall also be sent to the state library system and other depositories or clearinghouses.

(c) The bulletin shall be issued on the eighth and twenty-third days of each month. All agencies and applicants submitting draft environmental assessments, negative declarations, preparation notices, environmental impact statements, acceptance or nonacceptance determinations, addenda, supplemental statements, supplemental preparation notices, revised documents, withdrawals, and other notices required to be published in the bulletin shall submit such documents or notices to the office before the close of business eight working days prior to the issue date. In case the deadline falls on a state holiday or nonworking day, the deadline shall be the next working day.

(d) All submittals to the office for publication in the bulletin shall be accompanied by a completed informational form which provides whatever information the office needs to properly notify the public. The information requested may include the following: the title of the action; the islands affected by the proposed action; tax map key numbers; street addresses; nearest geographical landmarks; latitudinal and longitudinal coordinates; whether the proposed action is an agency or an applicant action; a citation of the applicable federal or state statutes requiring preparation of the document; the type of document prepared; the names, addresses and contact persons as applicable of the accepting authority, the proposing agency, the approving agency, the applicant, and the consultant; and a brief narrative summary of the proposed action which provides sufficient detail to convey the full impact of the proposed action to the public.

(e) The office may provide recommendations to the agency responsible for the environmental assessment or EIS regarding any applicable administrative content requirements set forth in this chapter.

(f) The office may, on a space available basis, publish other notices not specifically related to chapter 343, HRS. [Eff 12/6/85; am and comp Aug 31 1996] (Auth: HRS §§341-3, 343-5, 343-6) (Imp: HRS §§341-3, 343-3, 343-6)

SUBCHAPTER 4 RESPONSIBILITIES

§11-200-4 Identification of accepting authority. (a) Whenever an agency proposes an action, the final authority to accept a statement shall rest with:

- (1) The governor, or an authorized representative, whenever an action proposes the use of state lands or the use of state funds or, whenever a state agency proposes an action within section 11-200-6(b); or

(2) The mayor, or an authorized representative, of the respective county whenever an action proposes only the use of county lands or county funds.

(b) Whenever an applicant proposes an action, the authority for requiring statements and for accepting any required statements that have been prepared shall rest with the agency initially receiving and agreeing to process the request for an approval. In the event that there is more than one agency that has jurisdiction over the action, and these agencies are unable to agree as to which agency has the responsibility for complying with section 343-5(c), HRS, the office, after consultation with the agencies involved, shall determine which agency is responsible. In making the determination, the office shall take into consideration, including, but not limited to, the following factors:

- (1) The agency with the greatest responsibility for supervising or approving the action as a whole;
- (2) The agency that can most adequately fulfill the requirements of chapter 343, HRS, and this chapter;
- (3) The agency that has special expertise or access to information; and
- (4) The extent of participation of each agency in the action. [Eff 12/6/85; am and comp Aug 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

SUBCHAPTER 5 APPLICABILITY

§11-200-5 Agency actions. (a) For all proposed actions which are not exempt as defined in section 11-200-8, the agency shall assess at the earliest practicable time the significance of potential impacts of its actions, including the overall, cumulative impact in light of related actions in the region and further actions contemplated.

(b) The applicability of chapter 343, HRS, to specific agency proposed actions is conditioned by the agency's proposed use of state or county lands or funds. Therefore, when an agency proposes to implement an action to use state or county lands or funds, it shall be subject to the provisions of chapter 343, HRS, and this chapter.

(c) Use of state or county funds shall include any form of funding assistance flowing from the State or county, and use of state or county lands includes any use (title, lease, permit, easement, licenses, etc.) or entitlement to those lands.

(d) For agency actions, chapter 343, HRS, exempts from applicability any feasibility or planning study for possible future programs or projects which the agency has not approved, adopted, or funded. Nevertheless, if an agency is studying the feasibility of a proposal, it shall consider environmental factors and available alternatives and disclose these in any future assessment or subsequent statement. If, however, the planning and feasibility studies involve testing or other actions which may have a significant impact on the environment, then an environmental assessment shall be prepared.

(e) Any amendment to existing county general plans, however denominated, which may include but not be limited to development plans, or community plans, where the amendment would result in designations other than agriculture, conservation, or preservation requires an environmental assessment. (Actions by a county initiating a comprehensive review toward effectuating either a general plan or amendment thereof may be excepted. General plan amendments requested by a private owner or developer outside of the comprehensive review process are not excepted.) [Eff 12/6/85; am and comp Aug 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5(b), 343-6)

§11-200-6 Applicant actions. (a) Chapter 343, HRS, shall apply to persons who are required to obtain an agency approval prior to proceeding with:

- (1) Implementing actions which are either located in certain specified areas; or
- (2) Actions that require certain types of amendments to existing county general plans.

(b) Chapter 343, HRS, establishes certain categories of action which require the agency processing an applicant's request for approval to prepare an environmental assessment. There are seven geographical categories and two administrative categories.

(1) The seven geographical categories are:

(A) The use of state or county lands;

(B) Any use within any land classified as conservation district by the state land use commission under chapter 205, HRS;

(C) Any use within the shoreline area as defined in section 205A-41, HRS;

(D) Any use within any historic site as designated in the national register or Hawaii register;

(E) Any use within the Waikiki area of Oahu, the boundaries of which are delineated in the land use ordinance as amended, establishing the "Waikiki Special District";

(F) Any reclassification of any land classified as conservation district by the state land use commission under chapter 205, HRS; and

(G) The construction of new, or the expansion or modification of existing helicopter facilities within the State which by way of their activities may affect any land classified as conservation district by the state land use commission under chapter 205, HRS; the shoreline area as defined in section 205A-41, HRS; or, any historic site as designated in the National Register or Hawaii Register as provided for in the Historic Preservation Act of 1966, Public Law 98-665, or chapter 6E, HRS; or, until the statewide historic places inventory is completed, any historic site found by a field reconnaissance of the area affected by the helicopter facility and which is under consideration for placement on the National Register or the Hawaii Register of Historic Places.

(2) The two administrative categories are:

(A) Any amendment to existing county general plans, however denominated, which may include but not be limited to development plans, or community plans, where the amendment would result in designations other than agriculture, conservation, or preservation. (Actions by a county initiating a comprehensive review toward effectuating either a general plan or amendment thereof may be excepted. General plan amendments requested by a private owner or developer outside of the comprehensive review process are not excepted.); and

(B) The use of state or county funds, other than funds to be used for feasibility or planning studies for possible future programs or projects which the agency has not approved, adopted, or funded, or funds to be used for the acquisition of unimproved real property; provided that the agency shall consider environmental factors and available alternatives in its feasibility or planning studies. [Eff 12/6/85; am and comp Aug 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200-7 Multiple or phased applicant or agency actions. A group of actions proposed by an agency or an applicant shall be treated as a single action when:

(1) The component actions are phases or increments of a larger total undertaking;

(2) An individual project is a necessary precedent for a larger project;

(3) An individual project represents a commitment to a larger project; or

(4) The actions in question are essentially identical and a single statement will adequately address the impacts of each individual action and those of the group of actions as a whole. [Eff 12/6/85; comp Aug 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §343-6)

§11-200-8 Exempt classes of action. (a) Chapter 343, HRS, states that a list of classes of actions shall be drawn up which, because they will probably have minimal or no significant effect on the environment, may be declared exempt by the proposing agency or approving agency from the preparation of an environmental assessment provided that agencies declaring an action exempt under this section shall obtain

the advice of other outside agencies or individuals having jurisdiction or expertise as to the propriety of the exemption. Actions declared exempt from the preparation of an environmental assessment under this section are not exempt from complying with any other applicable statute or rule. The following list represents exempt classes of action:

- (1) Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing;
- (2) Replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced;
- (3) Construction and location of single, new, small facilities or structures and the alteration and modification of the same and installation of new, small, equipment and facilities and the alteration and modification of same, including, but not limited to:
 - (A) Single-family residences less than 3,500 square feet not in conjunction with the building of two or more such units;
 - (B) Multi-unit structures designed for not more than four dwelling units if not in conjunction with the building of two or more such structures;
 - (C) Stores, offices, and restaurants designed for total occupant load of twenty persons or less per structure, if not in conjunction with the building of two or more such structures; and
 - (D) Water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve such structures or facilities; accessory or appurtenant structures including garages, carports, patios, swimming pools, and fences; and, acquisition of utility easements;
- (4) Minor alterations in the conditions of land, water, or vegetation;
- (5) Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource;
- (6) Construction or placement of minor structures accessory to existing facilities;
- (7) Interior alterations involving things such as partitions, plumbing, and electrical conveyances;
- (8) Demolition of structures, except those structures located on any historic site as designated in the national register or Hawaii register as provided for in the National Historic Preservation Act of 1966, Public Law 89-665, 16 U.S.C. §470, as amended, or chapter 6E, HRS;
- (9) Zoning variances except shoreline set-back variances; and
- (10) Continuing administrative activities including, but not limited to purchase of supplies and personnel-related actions.

(b) All exemptions under the classes in this section are inapplicable when the cumulative impact of planned successive actions in the same place, over time, is significant, or when an action that is normally insignificant in its impact on the environment may be significant in a particularly sensitive environment.

(c) Any agency, at any time, may request that a new exemption class be added, or that an existing one be amended or deleted. The request shall be submitted to the council, in writing, and contain detailed information to support the request as set forth in section 11-201-16, environmental council rules.

(d) Each agency, through time and experience, shall develop its own list of specific types of actions which fall within the exempt classes, as long as these lists are consistent with both the letter and intent expressed in these exempt classes and chapter 343, HRS. These lists and any amendments to the lists shall be submitted to the council for review and concurrence. The lists shall be reviewed periodically by the council.

(e) Each agency shall maintain records of actions which it has found to be exempt from the requirements for preparation of an environmental assessment in chapter 343, HRS, and each agency shall produce the records for review upon request.

(f) In the event the governor declares a state of emergency, the governor may exempt any affected program or action from complying with this chapter. [Eff 12/6/85; am and comp Aug 31 1996]
(Auth: HRS §§343-5, 343-6) (Imp: HRS §343-6)

SUBCHAPTER 6
DETERMINATION OF SIGNIFICANCE

§11-200-9 Assessment of agency actions and applicant actions. (a) For agency actions, except those actions exempt from the preparation of an environmental assessment pursuant to section 343-5, HRS, or section 11-200-8, the proposing agency shall:

(1) Seek, at the earliest practicable time, the advice and input of the county agency responsible for implementing the county's general plan for each county in which the proposed action is to occur, and consult with other agencies having jurisdiction or expertise as well as those citizen groups and individuals which the proposing agency reasonably believes to be affected;

(2) Identify the accepting authority pursuant to section 11-200-4 and specify what statutory conditions under section 343-5(a), HRS, require the preparation of an environmental assessment;

(3) Prepare an environmental assessment pursuant to section 11-200-10 of this chapter which shall also identify potential impacts, evaluate the potential significance of each impact, and provide for detailed study of significant impacts;

(4) Determine, after reviewing the environmental assessment described in paragraph (3), and considering the significance criteria in section 11-200-12, whether the proposed action warrants an anticipated negative declaration or an environmental impact statement preparation notice, provided that for an environmental impact statement preparation notice, the proposing agency shall inform the accepting authority of the proposed action;

(5) File the appropriate notice of determination (anticipated negative declaration or environmental impact statement preparation notice in accordance with section 11-200-11.1 or 11-200-11.2, as appropriate), the completed informational form in section 11-200-3(d), and four copies of the supporting environmental assessment (a draft environmental assessment for the anticipated negative declaration or a final environmental assessment for the environmental impact statement preparation notice) with the office in accordance with sections 11-200-3, 11-200-11.1, 11-200-11.2, and other applicable sections of this chapter;

(6) Distribute, concurrently with the filing in paragraph (5), the draft environmental assessment to other agencies having jurisdiction or expertise as well as citizen groups and individuals which the proposing agency reasonably believes to be affected;

(7) Deposit, concurrently with the filing in paragraph (5), one copy of the draft environmental assessment at the nearest state library in each county in which the proposed action is to occur;

(8) Receive and respond to public comments in accordance with: section 11-200-9.1 for draft environmental assessments for anticipated negative declaration determinations; or, section 11-200-15 for environmental assessments for preparation notices. For draft environmental assessments, the proposing agency shall revise the environmental assessment to incorporate public comments as appropriate, and append copies of comment letters and responses in the environmental assessment (the draft environmental assessment as revised, shall be filed as a final environmental assessment as described in section 11-200-11.2); and

(9) As appropriate, issue either a negative declaration determination or an environmental impact statement preparation notice pursuant to the requirements of section 11-200-11.2, provided that for preparation notice determinations, the proposing agency shall proceed to section 11-200-15 after fulfilling the requirements of sections 11-200-10, 11-200-11.2, 11-200-13, and 11-200-14, as appropriate.

(b) For applicant actions, except those actions exempt from the preparation of an environmental assessment pursuant to section 343-5, HRS, or those actions which the approving agency declares exempt pursuant to section 11-200-8, the approving agency shall:

(1) Require the applicant, at the earliest practicable time, to seek the advice and input of the lead county agency responsible for implementing the county's general plan for each county in which the proposed action is to occur, and consult with other agencies having jurisdiction or expertise as well as those citizen groups and individuals which the approving agency reasonably believes to be affected;

(2) Require the applicant to provide whatever information the approving agency deems necessary to complete the preparation of an environmental assessment in accordance with section 11-200-10;

(3) Within thirty days from the date of receipt of the applicant's complete request for approval to the approving agency:

(A) prepare an environmental assessment pursuant to section 11-200-10; and

(B) determine, after reviewing the environmental assessment and considering the significance criteria in section 11-200-12 whether the proposed action warrants an anticipated negative declaration or an environmental impact statement preparation notice;

(4) File the appropriate notice of determination (anticipated negative declaration or environmental impact statement preparation notice in accordance with section 11-200-11.1 or 11-200-11.2), the completed informational form in section 11-200-3(d) and four copies of the supporting environmental assessment (a draft environmental assessment for the anticipated negative declaration or a final environmental assessment for the environmental impact statement preparation notice) with the office in accordance with sections 11-200-3, and 11-200-11.1, or 11-200-11.2;

(5) Distribute, or require the applicant to distribute, concurrently with the filing in paragraph (4), the draft environmental assessment to other agencies having jurisdiction or expertise as well as citizen groups and individuals which the approving agency reasonably believes to be affected;

(6) Deposit or require the applicant to deposit, concurrently with the filing in paragraph (4), one copy of the draft environmental assessment at the nearest state library in each county in which the proposed action is to occur;

(7) Receive public comments, transmit copies of public comments to the applicant and require the applicant to respond to public comments, all in accordance with section 11-200-9.1 for draft environmental assessments, or 11-200-15 for preparation notices and their associated final environmental assessments. For draft environmental assessments, the approving agency shall require the applicant: to provide whatever information the approving agency deems necessary to revise the draft environmental assessment; to incorporate comments as appropriate; and, to include copies of comment letters and the applicant responses (the draft environmental assessment as revised shall be filed as a final environmental assessment as described in section 11-200-11.2); and

(8) As appropriate, issue a negative declaration determination or an environmental impact statement preparation notice with appropriate notice of determination thereof pursuant to section 11-200-11.2 within thirty days from the end of the thirty-day public comment period. For preparation notice determinations, the approving agency shall proceed to section 11-200-15 after fulfilling the requirements of sections 11-200-10, 11-200-11.2, 11-200-13, and 11-200-14, as appropriate.

(c) For agency or applicant actions, the proposing agency or the approving agency, as appropriate, shall analyze alternatives, in addition to the proposed action in the environmental assessment. [Eff 12/6/85; am and comp Aug 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200-9.1 Public review and response requirements for draft environmental assessments for anticipated negative declaration determinations and addenda to draft environmental assessments. (a) This section shall apply only if a proposing agency or an approving agency anticipates a negative declaration determination for a proposed action and that agency has completed the requirements of section 11-200-9(a), paragraphs (1), (2), (3), (4), (5), (6) and (7), or section 11-200-9(b), paragraphs (1), (2), (3), (4), (5) and (6), as appropriate.

(b) The period for public review and for submitting written comments for both agency actions and applicant actions shall begin as of the initial issue date that notice of availability of the draft environmental assessment was published in the periodic bulletin and shall continue for a period of thirty days. Written comments to the proposing agency or approving agency, whichever is applicable, with a copy of the comments to the applicant or proposing agency, shall be received or postmarked to the proposing agency or approving agency, within the thirty-day period. Any comments outside of the thirty-day period need not be considered or responded to.

(c) For agency actions, the proposing agency shall respond in writing to all comments received or postmarked during the thirty-day review period, incorporate comments as appropriate, and append the comments and responses in the final environmental assessment. Each response shall be sent directly to the person commenting, with copies of the response also sent to the office.

(d) For applicant actions, the applicant shall respond in writing to all comments received or postmarked during the thirty-day review period and the approving agency shall incorporate or append the comments and responses in the final environmental assessment. Each response shall be sent directly to the person commenting with a copy to the office. A copy of each response shall be sent to the approving agency for its timely preparation of a determination and notice thereof pursuant to sections 11-200-9(b) and 11-200-11.1 or 11-200-11.2.

(e) An addendum document to a draft environmental assessment shall reference the original draft environmental assessment it attaches to and shall comply with all applicable public review and comment requirements set forth in sections 11-200-3 and 11-200-9. [Eff and comp Aug 31 1996](Auth: HRS §§343-3, 343-5, 343-6) (Imp: HRS §§343-3, 343-5, 343-6)

§11-200-10 Contents of an environmental assessment. The proposing agency or approving agency shall prepare any draft or final environmental assessment of each proposed action and determine whether the anticipated effects constitute a significant effect in the context of chapter 343, HRS, and section 11-200-12. The environmental assessment shall contain, but not be limited to, the following information:

- (1) Identification of applicant or proposing agency;
- (2) Identification of approving agency, if applicable;
- (3) Identification of agencies, citizen groups, and individuals consulted in making the assessment;
- (4) General description of the action's technical, economic, social, and environmental characteristics;
- (5) Summary description of the affected environment, including suitable and adequate regional, location and site maps such as Flood Insurance Rate Maps, Floodway Boundary Maps, or United States Geological Survey topographic maps;
- (6) Identification and summary of impacts and alternatives considered;
- (7) Proposed mitigation measures;
- (8) Agency determination or, for draft environmental assessments only, an anticipated determination;
- (9) Findings and reasons supporting the agency determination or anticipated determination;
- (10) Agencies to be consulted in the preparation of the EIS, if an EIS is to be prepared;
- (11) List of all permits and approvals (State, federal, county) required; and
- (12) Written comments and responses to the comments under the early consultation provisions of sections 11-200-9(a)(1), 11-200-9(b)(1), or 11-200-15, and statutorily prescribed public review periods. [Eff 12/6/85; am and comp Aug 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5(c), 343-6)

§11-200-11 REPEALED. [R Aug 31 1996]

§11-200-11.1 Notice of determination for draft environmental assessments. (a) After preparing an environmental assessment and reviewing public and agency comments, if any, applying the significance criteria in section 11-200-12, if the proposing agency or the approving agency anticipates that the proposed action is not likely to have a significant effect, it shall issue a notice of determination which shall be an anticipated negative declaration subject to the public review provisions of section 11-200-9.1. The proposing agency or approving agency shall also file such notice with the office as early as possible after the determination is made pursuant to and in accordance with section 11-200-9, and the requirements in subsection (c) along with four copies of the supporting environmental assessment. In addition to the above, the anticipated negative declaration determination for any applicant action shall be mailed to the requesting applicant by the approving agency.

(b) The office shall publish notice of availability of the draft environmental assessment for the anticipated negative declaration in the periodic bulletin following the date of receipt by the office in accordance with section 11-200-3.

(c) The notice of determination shall indicate in a concise manner:

(1) Identification of applicant or proposing agency;

(2) Identification of accepting authority;

(3) Brief description of proposed action;

(4) Determination;

(5) Reasons supporting determination; and

(6) Name, address, and phone number of contact person for further information.

(d) When an agency withdraws a determination pursuant to its rules, the agency shall submit to the office a written letter informing the office of its withdrawal. The office shall publish notice of agency withdrawals in accordance with section 11-200-3.

[Eff and comp Aug 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§ 343-5(c), 343-6)

§11-200-11.2 Notice of determination for final environmental assessments. (a) After preparing a final environmental assessment, reviewing public and agency comments, if any, applying the significance criteria in section 11-200-12, the proposing agency or the approving agency shall issue one of the following notices of determination in accordance with section 11-200-9(a) or 11-200-9(b), and file the notice with the office addressing the requirements in subsection (c), along with four copies of the supporting final environmental assessment, provided that in addition to the above, all notices of determination for any applicant action shall be mailed to the requesting applicant by the approving agency:

(1) Environmental impact statement preparation notice. If the proposing agency or approving agency determines that a proposed action may have a significant effect, it shall issue a notice of determination which shall be an environmental impact statement preparation notice and such notice shall be filed as early as possible after the determination is made pursuant to and in accordance with section 11-200-9.

(2) Negative declaration. If the proposing agency or approving agency determines that a proposed action is not likely to have a significant effect, it shall issue a notice of determination which shall be a negative declaration, and the proposing agency or approving agency shall file such notice with the office as early as possible after the determination is made pursuant to and in accordance with section 11-200-9.

(b) The office shall publish the appropriate notice of determination in the periodic bulletin following receipt of the documents in subsection (a) by the office in accordance with section 11-200-3.

(c) The notice of determination shall indicate in a concise manner:

(1) Identification of applicant or proposing agency;

(2) Identification of accepting authority;

(3) Brief description of proposed action;

(4) Determination;

(5) Reasons supporting determination; and

(6) Name, address, and phone number of contact person for further information.

(d) When an agency withdraws a determination pursuant to its rules, the agency shall submit to the office a written letter informing the office of its withdrawal. The office shall publish notice of agency withdrawals in accordance with section 11-200-3. [Eff and comp Aug 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§ 343-5(c), 343-6)

§11-200-12 Significance criteria. (a) In considering the significance of potential environmental effects, agencies shall consider the sum of effects on the quality of the environment, and shall evaluate the overall and cumulative effects of an action.

(b) In determining whether an action may have a significant effect on the environment, the agency shall consider every phase of a proposed action, the expected consequences, both primary and secondary, and the cumulative as well as the short-term and long-term effects of the action. In most instances, an action shall be determined to have a significant effect on the environment if it:

- (1) Involves an irrevocable commitment to loss or destruction of any natural or cultural resource;
 - (2) Curtails the range of beneficial uses of the environment;
 - (3) Conflicts with the state's long-term environmental policies or goals and guidelines as expressed in chapter 344, HRS, and any revisions thereof and amendments thereto, court decisions, or executive orders;
 - (4) Substantially affects the economic or social welfare of the community or State;
 - (5) Substantially affects public health;
 - (6) Involves substantial secondary impacts, such as population changes or effects on public facilities;
 - (7) Involves a substantial degradation of environmental quality;
 - (8) Is individually limited but cumulatively has considerable effect upon the environment or involves a commitment for larger actions;
 - (9) Substantially affects a rare, threatened, or endangered species, or its habitat;
 - (10) Detrimentally affects air or water quality or ambient noise levels;
 - (11) Affects or is likely to suffer damage by being located in an environmentally sensitive area such as a flood plain, tsunami zone, beach, erosion-prone area, geologically hazardous land, estuary, fresh water, or coastal waters;
 - (12) Substantially affects scenic vistas and viewplanes identified in county or state plans or studies;
- or,
- (13) Requires substantial energy consumption. [Eff 12/6/85; am and comp Aug 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-2, 343-6)

§11-200-13 Consideration of previous determinations and accepted statements. (a) Chapter 343, HRS, provides that whenever an agency proposes to implement an action or receives a request for approval, the agency may consider and, when applicable and appropriate, incorporate by reference, in whole or in part, previous determinations of whether a statement is required, and previously accepted statements.

(b) Previous determinations and previously accepted statements may be incorporated by applicants and agencies whenever the information contained therein is pertinent to the decision at hand and has logical relevancy and bearing to the action being considered.

(c) Agencies shall not, without considerable pre-examination and comparison, use past determinations and previous statements to apply to the action at hand. The action for which a determination is sought shall be thoroughly reviewed prior to the use of previous determinations and previously accepted statements. Further, when previous determinations and previous statements are considered or incorporated by reference, they shall be substantially similar to and relevant to the action then being considered. [Eff 12/6/85; am and comp Aug 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

SUBCHAPTER 7
PREPARATION OF DRAFT AND FINAL ENVIRONMENTAL IMPACT STATEMENTS

§11-200-14 General provisions. Chapter 343, HRS, directs that in both agency and applicant actions where statements are required, the preparing party shall prepare the EIS, submit it for review and comments, and revise it, taking into account all critiques and responses. Consequently, the EIS process involves more than the preparation of a document; it involves the entire process of research, discussion, preparation of a statement, and review. The EIS process shall involve at a minimum: identifying environmental concerns, obtaining various relevant data, conducting necessary studies, receiving public and agency input, evaluating alternatives, and proposing measures for avoiding, minimizing, rectifying or reducing adverse impacts. An EIS is meaningless without the conscientious application of the EIS process as a whole, and shall not be merely a self-serving recitation of benefits and a rationalization of the proposed action. Agencies shall ensure that statements are prepared at the earliest opportunity in the planning and decision-making process. This shall assure an early open forum for discussion of adverse effects and available alternatives, and that the decision-makers will be enlightened to any environmental consequences of the proposed action. [Eff 12/6/85; am and comp Aug 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §343-6)

§11-200-15 Consultation prior to filing a draft environmental impact statement. (a) In the preparation of a draft EIS, proposing agencies and applicants shall consult all appropriate agencies noted in section 11-200-10(10) and other citizen groups, and concerned individuals as noted in sections 11-200-9 and 11-200-9.1. To this end, agencies and applicants shall endeavor to develop a fully acceptable EIS prior to the time the EIS is filed with the office, through a full and complete consultation process, and shall not rely solely upon the review process to expose environmental concerns. At the discretion of the proposing agency or an applicant, a public scoping meeting to receive comments on the final environmental assessment (for the EIS preparation notice determination) setting forth the scope of the draft EIS may be held within the thirty-day public review and comment period in subsection (b), provided that the proposing agency or applicant shall treat oral and written comments received at such a meeting as indicated in subsection (d).

(b) Upon publication of a preparation notice in the periodic bulletin, agencies, groups, or individuals shall have a period of thirty days from the initial issue date in which to request to become a consulted party and to make written comments regarding the environmental effects of the proposed action. Upon written request by the consulted party and upon good cause shown, the approving agency or accepting authority may extend the period for comments for a period not to exceed thirty days.

(c) Upon receipt of the request, the proposing agency or applicant shall provide the consulted party with a copy of the environmental assessment or requested portions thereof and the environmental impact statement preparation notice. Additionally, the proposing agency or applicant may provide any other information it deems necessary. The proposing agency or applicant may also contact other agencies, groups, or individuals which it feels may provide pertinent additional information.

(d) Any substantive comments received by the proposing agency or applicant pursuant to this section shall be responded to in writing and as appropriate, incorporated into the draft EIS by the proposing agency or applicant prior to the filing of the draft EIS with the approving agency or accepting authority. Letters submitted which contain no comments on the project but only serve to acknowledge receipt of the document do not require a written response. Acknowledgement of receipt of these items must be included in the final environmental assessment or final statement. [Eff 12/6/85; am and comp Aug 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §343-6)

§11-200-16 Content requirements. The environmental impact statement shall contain an explanation of the environmental consequences of the proposed action. The contents shall fully declare the environmental implications of the proposed action and shall discuss all relevant and feasible consequences of the action. In order that the public can be fully informed and that the agency can make a sound decision based upon the full range of responsible opinion on environmental effects, a statement shall include responsible opposing views, if any, on significant environmental issues raised by the proposal. [Eff 12/6/85; am and comp Aug 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-2, 343-5, 343-6)

§11-200-17 Content requirements; draft environmental impact statement. (a) The draft EIS, at a minimum, shall contain the information required in this section.

(b) The draft EIS shall contain a summary sheet which concisely discusses the following:

(1) Brief description of the action;

(2) Significant beneficial and adverse impacts (including cumulative impacts and secondary impacts);

(3) Proposed mitigation measures;

(4) Alternatives considered;

(5) Unresolved issues; and

(6) Compatibility with land use plans and policies, and listing of permits or approvals.

(c) The draft EIS shall contain a table of contents.

(d) The draft EIS shall contain a separate and distinct section that includes a statement of purpose and need for the proposed action.

(e) The draft EIS shall contain a project description which shall include the following information, but need not supply extensive detail beyond that needed for evaluation and review of the environmental impact:

(1) A detailed map (preferably a United States Geological Survey topographic map, Flood Insurance Rate Maps or Floodway Boundary Maps as applicable) and a related regional map;

(2) Statement of objectives;

(3) General description of the action's technical, economic, social, and environmental characteristics;

(4) Use of public funds or lands for the action;

(5) Phasing and timing of action;

(6) Summary technical data, diagrams, and other information necessary to permit an evaluation of potential environmental impact by commenting agencies and the public; and

(7) Historic perspective.

(f) The draft EIS shall describe in a separate and distinct section alternatives which could attain the objectives of the action, regardless of cost, in sufficient detail to explain why they were rejected. The section shall include a rigorous exploration and objective evaluation of the environmental impacts of all such alternative actions. Particular attention shall be given to alternatives that might enhance environmental quality or avoid, reduce, or minimize some or all of the adverse environmental effects, costs, and risks. Examples of alternatives include:

(1) The alternative of no action;

(2) Alternatives requiring actions of a significantly different nature which would provide similar benefits with different environmental impacts;

(3) Alternatives related to different designs or details of the proposed actions which would present different environmental impacts;

(4) The alternative of postponing action pending further study; and,

(5) Alternative locations for the proposed project.

In each case, the analysis shall be sufficiently detailed to allow the comparative evaluation of the environmental benefits, costs, and risks of the proposed action and each reasonable alternative. For any agency actions, the discussion of alternatives shall include, where relevant, those alternatives not within the existing authority of the agency.

(g) The draft EIS shall include a description of the environmental setting, including a description of the environment in the vicinity of the action, as it exists before commencement of the action, from both a local and regional perspective. Special emphasis shall be placed on environmental resources that are rare or unique to the region and the project site (including natural or human-made resources of historic, archaeological, or aesthetic significance); specific reference to related projects, public and private, existent or planned in the region shall also be included for purposes of examining the possible overall cumulative impacts of such actions. Proposing agencies and applicants shall also identify, where appropriate, population and growth characteristics of the affected area and any population and growth assumptions used to justify the action and determine secondary population and growth impacts resulting from the proposed action and its alternatives. In any event, it is essential that the sources of data used to identify, qualify, or evaluate any and all environmental consequences be expressly noted.

(h) The draft EIS shall include a statement of the relationship of the proposed action to land use plans, policies, and controls for the affected area. Discussion of how the proposed action may conform or conflict with objectives and specific terms of approved or proposed land use plans, policies, and controls, if any, for the area affected shall be included. Where a conflict or inconsistency exists, the statement shall describe the extent to which the agency or applicant has reconciled its proposed action with the plan, policy, or control, and the reasons why the agency or applicant has decided to proceed, notwithstanding the absence of full reconciliation. The draft EIS shall also contain a list of necessary approvals, required for the action, from governmental agencies, boards, or commissions or other similar groups having jurisdiction. The status of each identified approval shall also be described.

(i) The draft EIS shall include a statement of the probable impact of the proposed action on the environment, and impacts of the natural or human environment on the project, which shall include consideration of all phases of the action and consideration of all consequences on the environment; direct and indirect effects shall be included. The interrelationships and cumulative environmental impacts of the proposed action and other related projects shall be discussed in the draft EIS. It should be realized that several actions, in particular those that involve the construction of public facilities or structures (e.g., highways, airports, sewer systems, water resource projects, etc.) may well stimulate or induce secondary effects. These secondary effects may be equally important as, or more important than, primary effects, and shall be thoroughly discussed to fully describe the probable impact of the proposed action on the environment. The population and growth impacts of an action shall be estimated if expected to be significant, and an evaluation made of the effects of any possible change in population patterns or growth upon the resource base, including but not limited to land use, water, and public services, of the area in question. Also, if the proposed action constitutes a direct or indirect source of pollution as determined by any governmental agency, necessary data shall be incorporated into the EIS. The significance of the impacts shall be discussed in terms of subsections (j), (k), (l), and (m).

(j) The draft EIS shall include in a separate and distinct section a description of the relationship between local short-term uses of humanity's environment and the maintenance and enhancement of long-term productivity. The extent to which the proposed action involves trade-offs among short-term and long-term gains and losses shall be discussed. The discussion shall include the extent to which the proposed action forecloses future options, narrows the range of beneficial uses of the environment, or poses long-term risks to health or safety. In this context, short-term and long-term do not necessarily refer to any fixed time periods, but shall be viewed in terms of the environmentally significant consequences of the proposed action.

(k) The draft EIS shall include in a separate and distinct section a description of all irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented. Identification of unavoidable impacts and the extent to which the action makes use of non-renewable resources during the phases of the action, or irreversibly curtails the range of potential uses of the environment shall also be included. The possibility of environmental accidents resulting from any phase of the action shall also be considered. Agencies shall avoid construing the term “resources” to mean only the labor and materials devoted to an action. “Resources” also means the natural and cultural resources committed to loss or destruction by the action.

(l) The draft EIS shall address all probable adverse environmental effects which cannot be avoided. Any adverse effects such as water or air pollution, urban congestion, threats to public health, or other consequences adverse to environmental goals and guidelines established by environmental response laws, coastal zone management laws, pollution control and abatement laws, and environmental policy such as that found in chapters 128D, 205A, 342B, 342C, 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L, 342N, 342P, and 344, HRS, shall be included, including those effects discussed in other actions of this paragraph which are adverse and unavoidable under the proposed action. Also, the rationale for proceeding with a proposed action, notwithstanding unavoidable effects, shall be clearly set forth in this section. The draft EIS shall indicate what other interests and considerations of governmental policies are thought to offset the adverse environmental effects of the proposed action. The statement shall also indicate the extent to which these stated countervailing benefits could be realized by following reasonable alternatives to the proposed action that would avoid some or all of the adverse environmental effects.

(m) The draft EIS shall consider mitigation measures proposed to avoid, minimize, rectify, or reduce impact, including provision for compensation for losses of cultural, community, historical, archaeological, fish and wildlife resources, including the acquisition of land, waters, and interests therein. Description of any mitigation measures included in the action plan to reduce significant, unavoidable, adverse impacts to insignificant levels, and the basis for considering these levels acceptable shall be included. Where a particular mitigation measure has been chosen from among several alternatives, the measures shall be discussed and reasons given for the choice made. Included, where possible and appropriate, should be specific reference to the timing of each step proposed to be taken in the mitigation process, what performance bonds, if any, may be posted, and what other provisions are proposed to assure that the mitigation measures will in fact be taken.

(n) The draft EIS shall include a separate and distinct section that summarizes unresolved issues and contains either a discussion of how such issues will be resolved prior to commencement of the action, or what overriding reasons there are for proceeding without resolving the problems.

(o) The draft EIS shall include a separate and distinct section that contains a list identifying all governmental agencies, other organizations and private individuals consulted in preparing the statement, and the identity of the persons, firms, or agency preparing the statement, by contract or other authorization, shall be disclosed.

(p) The draft EIS shall include a separate and distinct section that contains reproductions of all substantive comments and responses made during the consultation process. A list of those persons or agencies who were consulted and had no comment shall be included in the draft EIS. [Eff 12/6/85; am and comp Aug 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-2, 343-5, 343-6)

§11-200-18 Content requirements; final environmental impact statement. The final EIS shall consist of:

(1) The draft EIS revised to incorporate substantive comments received during the consultation and review processes;

(2) Reproductions of all letters received containing substantive questions, comments, or recommendations and, as applicable, summaries of any scoping meetings held;

- (3) A list of persons, organizations, and public agencies commenting on the draft EIS;
- (4) The responses of the applicant or proposing agency to each substantive question, comment, or recommendation received in the review and consultation processes.
- (5) The text of the final EIS which shall be written in a format which allows the reader to easily distinguish changes made to the text of the draft EIS. [Eff 12/6/85; am and comp Aug 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-2, 343-5, 343-6)

§11-200-19 Environmental impact statement style. In developing the EIS, preparers shall make every effort to convey the required information succinctly in a form easily understood, both by members of the public and by public decision-makers, giving attention to the substance of the information conveyed rather than to the particular form, or length, or detail of the statement. The scope of the statement may vary with the scope of the proposed action and its impact. Data and analyses in a statement shall be commensurate with the importance of the impact, and less important material may be summarized, consolidated, or simply referenced. Statements shall indicate at appropriate points in the text any underlying studies, reports, and other information obtained and considered in preparing the statement, including cost benefit analyses and reports required under other legal authorities. Care shall be taken to concentrate on important issues and to ensure that the statement remains an essentially self-contained document, capable of being understood by the reader without the need for undue cross-reference. [Eff 12/6/85; am and comp Aug 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §343-6)

§11-200-20 Filing of an environmental impact statement: (a) The proposing agency or applicant shall file the original (signed) draft EIS with the accepting authority, along with a minimum number of copies determined by the accepting authority. Simultaneously, a minimum number of four copies of the draft EIS shall be filed with the office.

(b) The proposing agency or applicant shall file the original (signed) final EIS with the accepting authority, along with a minimum number of copies determined by the accepting authority. Simultaneously, four copies of the final EIS shall be filed with the office.

(c) An EIS may be filed at any time at the office by the proposing agency or applicant in accordance with section 11-200-3.

(d) The proposing agency or applicant shall sign and date the original copy of the draft or final EIS and shall indicate that the statement and all ancillary documents were prepared under the signatory's direction or supervision and that the information submitted, to the best of the signatory's knowledge fully addresses document content requirements as set forth in sections 11-200-17 and 11-200-18, as appropriate. [Eff 12/6/85; am and comp Aug 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-3, 343-6)

§11-200-21 Distribution. The office shall be responsible for the publication of the notice of availability of the EIS in its bulletin. The office shall develop a distribution list of reviewers (i.e., persons and agencies with jurisdiction or expertise in certain areas relevant to various actions) and a list of public depositories, which shall include public libraries, where copies of the statements shall be available, and to the extent possible, the proposing agency or applicant shall make copies of the EIS available to individuals requesting the EIS. The office's distribution list may be developed cooperatively among the applicant or proposing agency, the accepting authority, and the office; provided the office shall be responsible for determining the final list. The applicant or proposing agency shall directly distribute the required copies to those on the distribution list after the office has verified to the applicant or proposing agency the accuracy of the distribution list. For final statements, the agency or applicant shall give the commentor an option of requesting a copy of the final EIS or portions thereof. [Eff 12/6/85; am and comp Aug 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-3, 343-5, 343-6)

§11-200-22 Public review of environmental impact statements and addenda to draft environmental impact statements. (a) Public review shall not substitute for early and open discussion with interested persons and agencies, concerning the environmental impacts of a proposed action. Review of the EIS shall serve to provide the public and other agencies an opportunity to discover the extent to which a proposing agency or applicant has examined environmental concerns and available alternatives.

(b) The period for public review and for submitting written comments shall commence as of the date notice of availability of the draft EIS is initially issued in the periodic bulletin and shall continue for a period of forty-five days. Written comments to the approving agency or accepting authority, whichever is applicable, with a copy of the comments to the applicant or proposing agency, shall be received or post-marked to the approving agency or accepting authority, within said forty-five-day period. Any comments outside of the forty-five day comment period need not be considered or responded to.

(c) The proposing agency or applicant shall respond in writing to the comments received or postmarked during the forty-five-day review period and incorporate the comments and responses in the final EIS. The response to comments shall include:

- (1) Point-by-point discussion of the validity, significance, and relevance of comments; and
- (2) Discussion as to how each comment was evaluated and considered in planning the proposed action.

The response shall endeavor to resolve conflicts, inconsistencies, or concerns. Response letters reproduced in the text of the final EIS shall indicate verbatim changes that have been made to the text of the draft EIS. The response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections, etc.). In particular, the issues raised when the applicant's or proposing agency's position is at variance with recommendations and objections raised in the comments shall be addressed in detail, giving reasons why specific comments and suggestions were not accepted, and factors of overriding importance warranting an override of the suggestions.

(d) An addendum document to a draft environmental impact statement shall reference the original draft environmental impact statement it attaches to and comply with all applicable filing, public review, and comment requirements set forth in subchapter 7. [Eff 12/6/85; am and comp Aug 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200-23 Acceptability. (a) Acceptability of a statement shall be evaluated on the basis of whether the statement, in its completed form, represents an informational instrument which fulfills the definition of an EIS and adequately discloses and describes all identifiable environmental impacts and satisfactorily responds to review comments.

(b) A statement shall be deemed to be an acceptable document by the accepting authority or approving agency only if all of the following criteria are satisfied:

- (1) The procedures for assessment, consultation process, review, and the preparation and submission of the statement, have all been completed satisfactorily as specified in this chapter;
- (2) The content requirements described in this chapter have been satisfied; and
- (3) Comments submitted during the review process have received responses satisfactory to the accepting authority, or approving agency, and have been incorporated in the statement.

(c) For actions proposed by agencies, the proposing agency may request the office to make a recommendation regarding the acceptability or non-acceptability of the EIS. In all cases involving state funds or lands, the governor or an authorized representative shall have final authority to accept the EIS. In cases involving only county funds or lands, the mayor of the respective county or an authorized representative shall have final authority to accept the EIS. The accepting authority shall take prompt measures to determine the acceptability or nonacceptability of the proposing agency's statement. In the event that the action involves both state and county lands or funds, the governor or an authorized representative shall have final authority to accept the EIS. Upon acceptance or non-acceptance of the EIS, a notice shall be filed by the appropriate

accepting authority with both the proposing agency and the office. For any non-accepted EIS, the notice shall contain specific findings and reasons for non-acceptance. The office shall publish notice of the determination of acceptance or non-acceptance in the periodic bulletin in accordance with section 11-200-3. Acceptance of a required statement shall be a condition precedent to the use of state or county lands or funds in implementing the proposed action.

(d) For actions proposed by applicants requiring approval from an agency, the applicant or accepting authority may request the office to make a recommendation regarding the acceptability or non-acceptability of the statement. If the office decides to make a recommendation, it shall submit the recommendation to the applicant and the approving agency within the thirty-day period requiring an approving agency to determine the acceptability of the final EIS and described in section 343-5(c), HRS. Upon acceptance or non-acceptance by the approving agency, the agency shall notify the applicant of its determination, and provide specific findings and reasons. The agency shall also provide a copy of this determination to the office for publication of a notice in the periodic bulletin. Acceptance of the required EIS shall be a condition precedent to approval of the request and commencement of the proposed action. An approving agency shall take prompt measures to determine the acceptability or non-acceptability of the applicant's statement. The agency shall notify the applicant and the office of the acceptance or non-acceptance of the final EIS within thirty days of the final EIS, provided that the thirty-day period may be extended at the request of the applicant for a period not to exceed fifteen days. The request shall be made to the accepting authority in writing. Upon receipt of an applicant's request for an extension of the thirty-day acceptance period, the accepting authority shall notify the office and applicant in writing of its decision to grant or deny the request. The notice shall be accompanied by a copy of the applicant's request. An extension of the thirty-day acceptance period shall not be allowed merely for the convenience of the accepting authority. In the event that the agency fails to make a determination of acceptance or non-acceptance for the statement within thirty days of the receipt of the final EIS, then the statement shall be deemed accepted.

(e) A non-accepted EIS may be revised by a proposing agency or applicant. The revision shall take the form of a revised draft EIS document which shall fully address the inadequacies of the non-accepted EIS and shall completely and thoroughly discuss the changes made. The requirements for filing, distribution, publication of availability for review, acceptance or non-acceptance, and notification and publication of acceptability shall be the same as the requirements prescribed by sections 11-200-20, 11-200-21, 11-200-22, and 11-200-23 for an EIS submitted for acceptance. In addition, the revised draft EIS shall be evaluated for acceptability on the basis of whether it satisfactorily addresses the findings and reasons for non-acceptance.

(f) A proposing agency or applicant may withdraw an EIS by sending a letter to the office informing the office of the agency's or applicant's withdrawal. Subsequent resubmittal of the EIS shall meet all requirements for filing, distribution, publication, review, acceptance, and notification as a new EIS. [Eff 12/6/85; am and comp Aug 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

SUBCHAPTER 8 APPEALS

§11-200-24 Appeals to the council. An applicant, within sixty days after non-acceptance of a statement by an agency, may appeal the non-acceptance to the council, which within thirty days of receipt of the appeal, shall notify the applicant of its determination. In any affirmation or reversal of an appealed non-acceptance, the council shall provide the applicant and the agency with specific findings and reasons for its determination. The agency shall abide by the council's decision. [Eff 12/6/85; am and comp Aug 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

SUBCHAPTER 9 NATIONAL ENVIRONMENTAL POLICY ACT

§11-200-25 National Environmental Policy Act actions: applicability to chapter 343, HRS. When the situation occurs where a certain action will be subject both to the National Environmental Policy Act of 1969 (Public Law 91-190, as amended by Public Law 94-52 and Public Law 94-83; 42 U.S.C. §§4321-4347) and chapter 343, HRS, the following shall occur:

- (1) The applicant or agency, upon discovery of its proposed action being subject to both chapter 343, HRS, and the National Environmental Policy Act, shall notify the responsible federal agency, the office, and any agency with a definite interest in the action (as prescribed by chapter 343, HRS) of the situation.
- (2) The National Environmental Policy Act requires that draft statements be prepared by the responsible federal agency. When the responsibility of preparing an EIS is delegated to a state or county agency, this chapter shall apply in addition to federal requirements under the National Environmental Policy Act. The office and agencies shall cooperate with federal agencies to the fullest extent possible to reduce duplication between federal and state requirements. This cooperation, to the fullest extent possible, shall include joint environmental impact statements with concurrent public review and processing at both levels of government. Where federal law has environmental impact statement requirements in addition to but not in conflict with this chapter, the office and agencies shall cooperate in fulfilling the requirements so that one document shall comply with all applicable laws.
- (3) In all actions where the use of state land or funds is proposed, the final statement shall be submitted to the governor or an authorized representative. In all actions where the use of county land or funds is proposed, the final statement shall be submitted to the mayor, or an authorized representative. The final statement in these instances shall first be accepted by the governor or mayor (or an authorized representative), prior to the submission of the same to the Environmental Protection Agency or responsible federal agency.
- (4) Any acceptance obtained pursuant to paragraphs (1) to (3) shall satisfy chapter 343, HRS, and no other statement for the proposed action shall be required. [Eff 12/6/85; am and comp Aug 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

SUBCHAPTER 10 SUPPLEMENTAL STATEMENTS

§11-200-26 General provisions. A statement that is accepted with respect to a particular action is usually qualified by the size, scope, location, intensity, use, and timing of the action, among other things. A statement that is accepted with respect to a particular action shall satisfy the requirements of this chapter and no other statement for that proposed action shall be required, to the extent that the action has not changed substantively in size, scope, intensity, use, location or timing, among other things. If there is any change in any of these characteristics which may have a significant effect, the original statement that was changed shall no longer be valid because an essentially different action would be under consideration and a supplemental statement shall be prepared and reviewed as provided by this chapter. As long as there is no change in a proposed action resulting in individual or cumulative impacts not originally disclosed, the statement associated with that action shall be deemed to comply with this chapter. [Eff 12/6/85; am and comp Aug 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200-27 Determination of applicability. The accepting authority or approving agency in coordination with the original accepting authority shall be responsible for determining whether a supplemental statement is required. This determination will be submitted to the office for publication in the periodic bulletin. Proposing agencies or applicants shall prepare for public review supplemental statements whenever the proposed action for which a statement was accepted has been modified to the extent that new or different environmental impacts are anticipated. A supplemental statement shall be warranted when the scope of an action has been substantially increased, when the intensity of environmental impacts will be increased, when the mitigating measures originally planned are not to be implemented, or where new circumstances or evidence have brought to light different or likely increased environmental impacts not previously dealt with. [Eff 12/6/85; am and comp Aug 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200-28 Contents. The contents of the supplemental statement shall be the same as required by this chapter for the EIS and may incorporate by reference unchanged material from the same; however, in addition, it shall fully document the proposed changes from the original EIS, including changes in ambient conditions or available information that have a bearing on a proposed action or its impacts, the positive and negative aspects of these changes, and shall comply with the content requirements of section 11-200-16 as they relate to the changes. [Eff 12/6/85; am and comp Aug 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §343-6)

§11-200-29 Procedures. The requirements of the thirty-day consultation, filing public notice, distribution, the forty-five-day public review, comments and response, and acceptance procedures, shall be the same for the supplemental statement as is prescribed by this chapter for an EIS. [Eff 12/6/85; am and comp Aug 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §343-6)

SUBCHAPTER 11 SEVERABILITY

§11-200-30 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application; and to this end, the provisions of this chapter are declared to be severable.” [Eff 12/6/85; comp Aug 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-6, 343-8)

Amendments to and compilation of chapter 200, title 11, Hawaii Administrative Rules, and the repeal of section 11-200-11, Hawaii Administrative Rules were adopted on March 27, 1996 following public hearings held on November 14, 1995, November 16, 1995, November 17, 1995, November 20, 1995 and November 21, 1995 after public notice was given in the Honolulu Advertiser, Honolulu Star-Bulletin, Maui News, The Garden Island, West Hawaii Today, Hawaii Tribune-Herald and Molokai Dispatch on October 12, 1995.

These rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

KENNETH K. FUKUNAGA
Chairperson
Environmental Council

LAWRENCE MIIKE, M.D.
Director
Department of Health

BENJAMIN J. CAYETANO
Governor
State of Hawaii

Dated: _____

Filed

APPROVED AS TO FORM:

KATHLEEN S. Y. HO
Deputy Attorney General

April 11, 2013.
This Guide is obsolete.
Use only for historical purposes.

CHAPTER 343

ENVIRONMENTAL IMPACT STATEMENTS

Section

343-1	Findings and purpose
343-2	Definitions
343-3	Public records and notice
343-4	Repealed
343-5	Applicability and requirements
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343-7	Limitation of actions
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Law Journals and Reviews

A Suggested Framework for Judicial Review of Challenges to the Adequacy of an Environmental Impact Statement Prepared under the Hawaii Environmental Policy Act. 18 UH L. Rev. 719.

Case Notes

Environmental impact statement addressed all statutory requirements of chapter, was compiled in good faith, and set forth sufficient information to enable decisionmaker to consider fully the environmental factors involved. 81 H. 171, 914 P.2d 1364.

Chapter does not conflict with Hawaiian homes commission act, has only incidental impact on Hawaiian home lands, and is not inconsistent with interests of the beneficiaries; thus, chapter applies to Hawaiian home lands. 87 H. 91, 952 P.2d 379.

HHCA §204 not violated by application of this chapter. 87 H. 91, 952 P.2d 379.

§343-1 Findings and purpose. The legislature finds that the quality of humanity's environment is critical to humanity's well being, that humanity's activities have broad and profound effects upon the interrelations of all components of the environment, and that an environmental review process will integrate the review of environmental concerns with existing planning processes of the State and counties and alert decision makers to significant environmental effects which may result from the implementation of certain actions. The legislature further finds that the process of reviewing environmental effects is desirable because environmental consciousness is enhanced, cooperation and coordination are encouraged, and public participation during the review process benefits all parties involved and society as a whole.

It is the purpose of this chapter to establish a system of environmental review which will ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations. [L 1979, c 197, §1(1); am L 1983, c 140, §4]

§343-2 Definitions. As used in this chapter unless the context otherwise requires:

“Acceptance” means a formal determination that the document required to be filed pursuant to section 343-5 fulfills the definition of an environmental impact statement, adequately describes identifiable environmental impacts, and satisfactorily responds to comments received during the review of the statement.

“Action” means any program or project to be initiated by any agency or applicant.

“Agency” means any department, office, board, or commission of the state or county government which is a part of the executive branch of that government.

“Applicant” means any person who, pursuant to statute, ordinance, or rule, officially requests approval for a proposed action.

“Approval” means a discretionary consent required from an agency prior to actual implementation of an action.

“Council” means the environmental council.

“Discretionary consent” means a consent, sanction, or recommendation from an agency for which judgment and free will may be exercised by the issuing agency, as distinguished from a ministerial consent.

“Environmental assessment” means a written evaluation to determine whether an action may have a significant effect.

“Environmental impact statement” or “statement” means an informational document prepared in compliance with the rules adopted under section 343-6 and which discloses the environmental effects of a proposed action, effects of a proposed action on the economic welfare, social welfare, and cultural practices of the community and State, effects of the economic activities arising out of the proposed action, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects.

The initial statement filed for public review shall be referred to as the draft statement and shall be distinguished from the final statement which is the document that has incorporated the public’s comments and the responses to those comments. The final statement is the document that shall be evaluated for acceptability by the respective accepting authority.

“Finding of no significant impact” means a determination based on an environmental assessment that the subject action will not have a significant effect and, therefore, will not require the preparation of an environmental impact statement.

“Helicopter facility” means any area of land or water which is used, or intended for use for the landing or takeoff of helicopters; and any appurtenant areas which are used, or intended for use for helicopter related activities or rights-of-way.

“Office” means the office of environmental quality control.

“Person” includes any individual, partnership, firm, association, trust, estate, private corporation, or other legal entity other than an agency.

“Significant effect” means the sum of effects on the quality of the environment, including actions that irrevocably commit a natural resource, curtail the range of beneficial uses of the environment, are contrary to the State’s environmental policies or long-term environmental goals as established by law, or adversely affect the economic welfare, social welfare, or cultural practices of the community and State. [L 1974, c 246, pt of §1; am and ren L 1979, c 197, §1(2); am L 1983, c 140, §5; am L 1986, c 186, §1; am L 1987, c 187, §1 and c 325, §2; am L 1996, c 61, §1; am L 2000, c 50, §2]

Attorney General Opinions

“Action” includes a subdivision proposal. Att. Gen. Op. 75-14.

“Action” includes issuance of building permits. Att. Gen. Op. 75-15.

Case Notes

Sufficiency of an environmental impact statement is a question of law. 81 H. 171, 914 P.2d 1364.

§343-3 Public records and notice. (a) All statements, environmental assessments, and other documents prepared under this chapter shall be made available for inspection by the public during established office hours.

(b) The office shall inform the public of notices filed by agencies of the availability of environmental assessments for review and comments, of determinations that statements are required or not required, of the availability of statements for review and comments, and of the acceptance or nonacceptance of statements.

(c) The office shall inform the public of:

(1) A public comment process or public hearing if a federal agency provides for the public comment process or public hearing to process a habitat conservation plan, safe harbor agreement, or incidental take license pursuant to the federal Endangered Species Act;

(2) A proposed habitat conservation plan or proposed safe harbor agreement, and availability for inspection of the proposed agreement, plan, and application to enter into a planning process for the preparation and implementation of the habitat conservation plan for public review and comment;

(3) A proposed incidental take license as part of a habitat conservation plan or safe harbor agreement; and

(4) An application for the registration of land by accretion pursuant to section 501-33 or 669-1(e) for any land accreted along the ocean.

(d) The office shall inform the public by the publication of a periodic bulletin to be available to persons requesting this information. The bulletin shall be available through the office and public libraries. [L 1974, c 246, pt of §1; ren L 1979, c 197, §1(3); am L 1983, c 140, §6; am L 1992, c 241, §1; am L 1997, c 380, §8; am L 1998, c 237, §7; am L 2003, c 73, §3]

§343-4 REPEALED. L 1983, c 140, §7.

§343-5 Applicability and requirements. (a) Except as otherwise provided, an environmental assessment shall be required for actions which:

(1) Propose the use of state or county lands or the use of state or county funds, other than funds to be used for feasibility or planning studies for possible future programs or projects which the agency has not approved, adopted, or funded, or funds to be used for the acquisition of unimproved real property; provided that the agency shall consider environmental factors and available alternatives in its feasibility or planning studies;

(2) Propose any use within any land classified as conservation district by the state land use commission under chapter 205;

(3) Propose any use within the shoreline area as defined in section 205A-41;

(4) Propose any use within any historic site as designated in the National Register or Hawaii Register as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or chapter 6E;

(5) Propose any use within the Waikiki area of Oahu, the boundaries of which are delineated in the land use ordinance as amended, establishing the “Waikiki Special District”;

(6) Propose any amendments to existing county general plans where such amendment would result in designations other than agriculture, conservation, or preservation, except actions proposing any new county general plan or amendments to any existing county general plan initiated by a county;

(7) Propose any reclassification of any land classified as conservation district by the state land use commission under chapter 205; and

[(8)] Propose the construction of new, or the expansion or modification of existing helicopter facilities within the State which by way of their activities may affect any land classified as conservation district by the state land use commission under chapter 205; the shoreline area as defined in section 205A-41; or, any historic site as designated in the National Register or Hawaii Register as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or chapter 6E; or, until the statewide historic places inventory is completed, any historic site found by a field reconnaissance of the area affected by the helicopter facility and which is under consideration for placement on the National Register or the Hawaii Register of Historic Places.

(b) Whenever an agency proposes an action in subsection (a), other than feasibility or planning studies for possible future programs or projects which the agency has not approved, adopted, or funded, or other than the use of state or county funds for the acquisition of unimproved real property, which is not a specific type of action declared exempt under section 343-6, that agency shall prepare an environmental assessment for

such action at the earliest practicable time to determine whether an environmental impact statement shall be required. For environmental assessments for which a finding of no significant impact is anticipated, a draft environmental assessment shall be made available for public review and comment for a period of thirty days. The office shall inform the public of the availability of the draft environmental assessment for public review and comments pursuant to section 343-3. The agency shall respond in writing to comments received during the review and prepare a final environmental assessment to determine whether an environmental impact statement shall be required. A statement shall be required if the agency finds that the proposed action may have a significant effect on the environment. The agency shall file notice of such determination with the office which, in turn, shall publish the agency's determination for the public's information pursuant to section 343-3. The draft and final statements, if required, shall be prepared by the agency and submitted to the office. The draft statement shall be made available for public review and comment through the office for a period of forty-five days. The office shall inform the public of the availability of the draft statement for public review and comments pursuant to section 343-3. The agency shall respond in writing to comments received during the review and prepare a final statement. The office, when requested by the agency, may make a recommendation as to the acceptability of the final statement. The final authority to accept a final statement shall rest with:

(1) The governor, or the governor's authorized representative, whenever an action proposes the use of state lands or the use of state funds or whenever a state agency proposes an action within the categories in subsection (a); or

(2) The mayor, or the mayor's authorized representative, of the respective county whenever an action proposes only the use of county lands or county funds.

Acceptance of a required final statement shall be a condition precedent to implementation of the proposed action. Upon acceptance or nonacceptance of the final statement, the governor or mayor, or the governor's or mayor's authorized representative, shall file notice of such determination with the office. The office, in turn, shall publish the determination of acceptance or nonacceptance pursuant to section 343-3.

(c) Whenever an applicant proposes an action specified by subsection (a) which requires approval of an agency, and which is not a specific type of action declared exempt under section 343-6, the agency receiving the request for approval shall prepare an environmental assessment of such proposed action at the earliest practicable time to determine whether an environmental impact statement shall be required. For environmental assessments for which a finding of no significant impact is anticipated, a draft environmental assessment shall be made available for public review and comment for a period of thirty days. The office shall inform the public of the availability of the draft environmental assessment for public review and comments pursuant to section 343-3. The applicant shall respond in writing to comments received during the review and the agency shall prepare a final environmental assessment to determine whether an environmental impact statement shall be required. A statement shall be required if the agency finds that the proposed action may have a significant effect on the environment. The agency shall file notice of such determination with the office which, in turn, shall publish the agency's determination for the public's information pursuant to section 343-3. The draft and final statements, if required, shall be prepared by the applicant, who shall file these statements with the office. The draft statement shall be made available for public review and comments through the office for a period of forty-five days. The office shall inform the public of the availability of the draft statement for public review and comments pursuant to section 343-3. The applicant shall respond in writing to comments received during the review and prepare a final statement. The office, when requested by

the applicant or agency, may make a recommendation as to the acceptability of the final statement. The authority to accept a final statement shall rest with the agency receiving the request for approval. Acceptance of a required final statement shall be a condition precedent to approval of the request and commencement of proposed action. Upon acceptance or nonacceptance of the final statement, the agency shall file notice of such determination with the office. The office, in turn, shall publish the determination of acceptance or nonacceptance of the final statement pursuant to section 343-3. The agency receiving the request, within thirty days of receipt of the final statement, shall notify the applicant and the office of the acceptance or nonacceptance of the final statement. The final statement shall be deemed to be accepted if the agency fails to accept or not accept the final statement within thirty days after receipt of the final statement; provided that the thirty-day period may be extended at the request of the applicant for a period not to exceed fifteen days.

In any acceptance or nonacceptance, the agency shall provide the applicant with the specific findings and reasons for its determination. An applicant, within sixty days after nonacceptance of a final statement by an agency, may appeal the nonacceptance to the environmental council, which, within thirty days of receipt of the appeal, shall notify the applicant of the council's determination. In any affirmation or reversal of an appealed nonacceptance, the council shall provide the applicant and agency with specific findings and reasons for its determination. The agency shall abide by the council's decision.

(d) Whenever an applicant simultaneously requests approval for a proposed action from two or more agencies and there is a question as to which agency has the responsibility of preparing the environmental assessment, the office, after consultation with the agencies involved, shall determine which agency shall prepare the assessment.

(e) In preparing an environmental assessment, an agency may consider and, where applicable and appropriate, incorporate by reference, in whole or in part, previous determinations of whether a statement is required and previously accepted statements. The council, by rules, shall establish criteria and procedures for the use of previous determinations and statements.

(f) Whenever an action is subject to both the National Environmental Policy Act of 1969 (Public Law 91-190) and the requirements of this chapter, the office and agencies shall cooperate with federal agencies to the fullest extent possible to reduce duplication between federal and state requirements. Such cooperation, to the fullest extent possible, shall include joint environmental impact statements with concurrent public review and processing at both levels of government. Where federal law has environmental impact statement requirements in addition to but not in conflict with this chapter, the office and agencies shall cooperate in fulfilling these requirements so that one document shall comply with all applicable laws.

(g) A statement that is accepted with respect to a particular action shall satisfy the requirements of this chapter and no other statement for that proposed action shall be required. [L 1974, c 246, pt of §1; am and ren L 1979, c 197, §1(5) and (6); am L 1980, c 22, §1; am L 1983, c 140, §8; gen ch 1985; am L 1987, c 187, §2, c 195, §1, c 283, §23, and c 325, §1; am L 1992, c 241, §2; am L 1996, c 61, §2]

Attorney General Opinions

Amendments to county development plans; when environmental assessments required. Att. Gen. Op. 85-30.

Applicable to housing developed under chapter 359G. Att. Gen. Op. 86-13.

Case Notes

Law contemplates consideration of secondary and nonphysical aspects of proposal, including socio-economic consequences. 63 H. 453, 629 P.2d 1134.

Requirements not applicable to project pending when law took effect unless agency requested statement. 63 H. 453, 629 P.2d 1134.

Construction and use of home and underground utilities near Paiko Lagoon wildlife sanctuary. 64 H. 27, 636 P.2d 158.

Environmental assessment required before land use commission can reclassify conservation land to other uses. 65 H. 133, 648 P.2d 702.

Participation by plaintiffs at contested case hearing did not excuse preparation of environmental assessment. 86 H. 66, 947 P.2d 378.

For Hawaiian home lands, the department of Hawaiian home lands is the accepting authority for applicant proposals under subsection (c); because the governor is not involved, there is no conflict with Hawaiian homes commission act. 87 H. 91, 952 P.2d 379.

“State lands” in subsection (a)(1) includes Hawaiian home lands. 87 H. 91, 952 P.2d 379.

In order to achieve the salutary objectives of the Hawaii environmental policy act, and because developer’s proposed underpasses had been, from the start, an integral part of the project, developer’s proposed construction of two underpasses under highway constituted “use of state lands” within the meaning of subsection (a)(1). 91 H. 94, 979 P.2d 1120.

Hawaii Legal Reporter Citations

Decision on preparation of EIS. 79 HLR 790667.

§343-6 Rules. (a) After consultation with the affected agencies, the council shall adopt, amend, or repeal necessary rules for the purposes of this chapter in accordance with chapter 91 including, but not limited to, rules which shall:

- (1) Prescribe the contents of an environmental impact statement;
- (2) Prescribe the procedures whereby a group of proposed actions may be treated by a single statement;
- (3) Prescribe procedures for the preparation and contents of an environmental assessment;
- (4) Prescribe procedures for the submission, distribution, review, acceptance or nonacceptance, and withdrawal of a statement;
- (5) Prescribe procedures to appeal the nonacceptance of a statement to the environmental council;

- (6) Establish criteria to determine whether a statement is acceptable or not;
- (7) Establish procedures whereby specific types of actions, because they will probably have minimal or no significant effects on the environment, are declared exempt from the preparation of an assessment;
- (8) Prescribe procedures for informing the public of determinations that a statement is either required or not required, for informing the public of the availability of draft statements for review and comments, and for informing the public of the acceptance or nonacceptance of the final statement; and
- (9) Prescribe the contents of an environmental assessment.
- (b) At least one public hearing shall be held in each county prior to the final adoption, amendment, or repeal of any rule. [L 1974, c 246, pt of §1; am and ren L 1979, c 197, §1(7); am L 1983, c 140, §9; am L 1986, c 186, §2; am L 1987, c 187, §3]

Case Notes

Project requiring completely new drainage system serving over 300 residences was qualitatively incompatible with both letter and intent of administrative rules implementing subsection (a)(7) which intended to exempt only very minor projects from requirements of this chapter. 86 H. 66, 947 P.2d 378.

[§343-6.5] Waiahole water system; exemption. The purchase of the assets of the Waiahole water system shall be specifically exempt from the requirements of chapter 343. [L 1998, c 111, §4]

§343-7 Limitation of actions. (a) Any judicial proceeding, the subject of which is the lack of assessment required under section 343-5, shall be initiated within one hundred twenty days of the agency's decision to carry out or approve the action, or, if a proposed action is undertaken without a formal determination by the agency that a statement is or is not required, a judicial proceeding shall be instituted within one hundred twenty days after the proposed action is started. The council or office, any agency responsible for approval of the action, or the applicant shall be adjudged an aggrieved party for the purposes of bringing judicial action under this subsection. Others, by court action, may be adjudged aggrieved.

(b) Any judicial proceeding, the subject of which is the determination that a statement is required for a proposed action, shall be initiated within sixty days after the public has been informed of such determination pursuant to section 343-3. Any judicial proceeding, the subject of which is the determination that a statement is not required for a proposed action, shall be initiated within thirty days after the public has been informed of such determination pursuant to section 343-3. The council or the applicant shall be adjudged an aggrieved party for the purposes of bringing judicial action under this subsection. Others, by court action, may be adjudged aggrieved.

(c) Any judicial proceeding, the subject of which is the acceptance of an environmental impact statement required under section 343-5, shall be initiated within sixty days after the public has been informed pursuant to section 343-3 of the acceptance of such statement. The council shall be adjudged an aggrieved party for

the purpose of bringing judicial action under this subsection. Affected agencies and persons who provided written comment to such statement during the designated review period shall be adjudged aggrieved parties for the purpose of bringing judicial action under this subsection; provided that the contestable issues shall be limited to issues identified and discussed in the written comment. [L 1974, c 246, pt of §1; am and ren L 1979, c 197, §1(8); am L 1983, c 140, §10; am L 1992, c 241, §3]

Case Notes

Court has no jurisdiction over actions initiated after time limit. 64 H. 126, 637 P.2d 776.

Date of commission's decision to grant SMA permit triggered time period for appeal, not date when commission made express determination that no environmental assessment was required for project; plaintiff's challenge to lack of environmental assessment thus timely. 86 H. 66, 947 P.2d 378.

Where the federal construct of a procedural right was not germane to case because this section, the statute at issue, establishes who and under what circumstances the lack of an environmental assessment, may be challenged, and federal cases recognizing this standard were inapposite because they rested on non-analogous statutes, petitioner could not be afforded so-called "procedural standing" under subsection (a). 100 H. 242, 59 P.3d 877.

§343-8 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application; and to this end, the provisions of this chapter are declared to be severable. [L 1974, c 246, pt of §1; ren L 1979, c 197, §1(9)]

April 11, 2013.
This Guide is obsolete.
Use only for historical purposes.

CHAPTER 341

ENVIRONMENTAL QUALITY CONTROL

SECTION

341-1 FINDINGS AND PURPOSE

341-2 DEFINITIONS

341-3 OFFICE OF ENVIRONMENTAL QUALITY CONTROL; ECOLOGY OR ENVIRONMENTAL CENTER; ENVIRONMENTAL COUNCIL

341-4 POWERS AND DUTIES OF THE DIRECTOR

341-5 STRUCTURE AND FUNCTIONS OF THE ECOLOGY OR ENVIRONMENTAL CENTER

341-6 FUNCTIONS OF THE ENVIRONMENTAL COUNCIL

Note Effect of 1983 amendments, see L 1983, c 140, §§11 to 14.

§341-1 Findings and purpose. The legislature finds that the quality of the environment is as important to the welfare of the people of Hawaii as is the economy of the State. The legislature further finds that the determination of an optimum balance between economic development and environmental quality deserves the most thoughtful consideration, and that the maintenance of the optimum quality of the environment deserves the most intensive care. The purpose of this chapter is to stimulate, expand and coordinate efforts to determine and maintain the optimum quality of the environment of the State. [L 1970, c 132, pt of §1]

Law Journals and Reviews

A Suggested Framework for Judicial Review of Challenges to the Adequacy of an Environmental Impact Statement Prepared under the Hawaii Environmental Policy Act. 18 UH L. Rev. 719.

§341-2 Definitions. As used in this chapter, unless the context otherwise requires:

“Center” means the University of Hawaii ecology or environmental center established in section 341-3(b).

“Council” means the environmental council established in section 341-3(c).

“Director” means the director of environmental quality control.

“Office” means the office of environmental quality control established in section 341-3(a).

“University” means the University of Hawaii. [L 1970, c 132, pt of §1]

Revision Note

Numeric designations deleted and definitions rearranged.

§341-3 Office of environmental quality control; ecology or environmental center; environmental council.

(a) There is created an office of environmental quality control which shall be headed by a single executive to be known as the director of environmental quality control who shall be appointed by the governor as provided in section 26-34. This office shall implement this chapter and shall be placed within the department of health for administrative purposes. The office shall perform its duties under chapter 343 and shall serve the governor in an advisory capacity on all matters relating to environmental quality control.

(b) There is created within the university an ecology or environmental center.

(c) There is created an environmental council not to exceed fifteen members. Except for the director, members of the environmental council shall be appointed by the governor as provided in section 26-34. The council shall be attached to the department of health for administrative purposes. Except for the director, the term of each member shall be four years; provided that, of the members initially appointed, five members shall serve for four years, five members shall serve for three years, and the remaining four members shall serve for two years. Vacancies shall be filled for the remainder of any unexpired term in the same manner as original appointments. The director shall be an ex officio voting member of the council. The council chairperson shall be elected by the council from among the appointed members of the council. Members shall be appointed to assure a broad and balanced representation of educational, business, and environmentally pertinent disciplines and professions, such as the natural and social sciences, the humanities, architecture, engineering, environmental consulting, public health, and planning; educational and research institutions with environmental competence; agriculture, real estate, visitor industry, construction, media, and voluntary community and environmental groups. The members of the council shall serve without compensation but shall be reimbursed for expenses, including travel expenses, incurred in the discharge of their duties. [L 1970, c 132, pt of §1; am L 1980, c 302, pt of §2; am L 1983, c 140, §1; am L 1987, c 233, §1]

§341-4 Powers and duties of the director. (a) The director shall have such powers delegated by the governor as are necessary to coordinate and, when requested by the governor, to direct pursuant to chapter 91 all state governmental agencies in matters concerning environmental quality.

(b) To further the objective of subsection (a), the director shall:

(1) Direct the attention of the university community and the residents of the State in general to ecological and environmental problems through the center and the council, respectively, and through public education programs;

(2) Conduct research or arrange for the conduct of research through contractual relations with the center, state agencies, or other persons with competence in the field of ecology and environmental quality;

(3) Encourage public acceptance of proposed legislative and administrative actions concerning ecology and environmental quality, and receive notice of any private or public complaints concerning ecology and environmental quality through the council;

(4) Recommend programs for long-range implementation of environmental quality control;(5) Submit direct to the governor and to the legislature such legislative bills and administrative policies, objectives, and actions, as are necessary to preserve and enhance the environmental quality of the State;

(6) Conduct public educational programs; and

(7) Offer advice and assistance to private industry, governmental agencies, or other persons upon request.

(c) The director shall adopt rules pursuant to chapter 91 necessary for the purposes of implementing this chapter and chapter 343D. [L 1970, c 132, pt of § 1; am L 1978, c 161, §1; am L 1985, c 127, §3; am L 1987, c 185, §1

Cross References

Appropriation for yearly contract, the terms and provisions of which shall be mutually agreed upon by the director of environmental quality control and the president of the university, see L 1970, c 132, §2.

§341-5 Structure and functions of the ecology or environmental center.

(a) The center shall be so constituted as to make most effective the contribution of the university to the problems of determining and maintaining optimum environmental quality. Its membership shall be comprised of those members of the university community actively concerned with ecological and environmental problems.

(b) The functions of the center shall be to stimulate, expand, and coordinate education, research, and service efforts of the university related to ecological relationships, natural resources, and environmental quality, with special relation to human needs and social institutions, particularly with regard to the State. [L 1970, c 132, pt of §1]

§341-6 Functions of the environmental council. The council shall serve as a liaison between the director and the general public by soliciting information, opinions, complaints, recommendations, and advice concerning ecology and environmental quality through public hearings or any other means and by publicizing such matters as requested by the director pursuant to section 341-4(b)(4). The council may make recommendations concerning ecology and environmental quality to the director and shall meet at the call of the council chairperson or the director upon notifying the council chairperson. The council shall monitor the progress of state, county, and federal agencies in achieving the State’s environmental goals and policies and with the assistance of the director shall make an annual report with recommendations for improvement to the governor, the legislature, and the public no later than January 31 of each year. All state and county agencies shall cooperate with the council and assist in the preparation of such a report by responding to requests for information made by the council. The council may delegate to any person such power or authority vested in the council as it deems reasonable and proper for the effective administration of this section and chapter 343, except the power to make, amend, or repeal rules. [L 1970, c 132, pt of §1; am L 1974, c 248, §1; am L 1983, c 140, §2]

Note

Pesticides and environmental quality. L 1984, c 275, §1 as amended by L 1985, c 127, §1 to be effective until June 30, 1987. Being transitory, the provisions have not been codified into the Hawaii Revised Statutes. The provisions read as follows:

“(a) Findings and purpose. The legislature finds that the problem of pesticide contamination has increased in scope and urgency, requiring a comprehensive and innovative approach in statewide efforts to address recent problems in our various communities. The legislature further finds that the enhancement of the authority of the office of environmental quality control and the delegation to the office of additional responsibilities to protect and preserve the health of Hawaii’s people are appropriate responses to a compelling State interest.

(b) Definitions. As used in this section, unless the context otherwise requires: “Affected agencies” means the department of health, department of agriculture, the department of land and natural resources; the boards of water supply for Maui county, Kauai county, Hawaii county, and the city and county of Honolulu; the college of tropical agriculture and human resources, the pesticide hazard assessment project, and the water resources research center of the University of Hawaii; and other agencies as may be determined by the director. “Director” means the director of environmental quality control. “Office” means the office of environmental quality control.

(c) Duties and responsibilities in general. The office is authorized to review, evaluate, make recommendations to, and coordinate all affected agencies involved in the prevention, monitoring, and mitigation of pesticide contamination. For the purposes of this Act, the authorization of the office may be liberally interpreted to extend to suspected or actual contamination related to, similar to, or coincidental with pesticides pollution. To further the purposes of this Act, the office is authorized to:

(1) Coordinate the development of a systematic approach to monitoring by the department of health and board of water supply of all aquifers and surface water sources, regardless of whether they are used as drinking water sources, for locally suspected pesticides and chemical by-products. Monitoring priority shall be given to potable drinking water resources.

(2) Assist the department of agriculture in developing, compiling, and maintaining a data base of historical and current pesticide use patterns and practices to assist in identifying areas where ground water contamination resulting from the field application of pesticides is most likely to occur.

(3) Coordinate the development, by each of the affected agencies, of a pesticides action plan which clearly defines each agency's responsibilities, needs, and procedures for preventing or mitigating pesticide-related contamination.

(4) Assess the feasibility and usefulness of establishing a mandatory reporting system for all pesticides sold and distributed in Hawaii.

(5) Assess the feasibility and usefulness of a record keeping requirement for the application of all restricted use pesticides in Hawaii.

(6) Coordinate the preparation by the affected agencies of a contingency plan to provide for the State's preparedness and ability to respond effectively in the event of any emergency contamination or crisis situation involving pesticides.

(7) Assess the feasibility of developing criteria to assess the risks associated with the contamination of water, food products, and the environment by pesticides, supplementing federal standards in this area and, if feasible, develop such criteria.

(8) Coordinate and disseminate on behalf of the affected agencies all public information on pesticide-related environmental and health matters.

(d) Powers and duties of the director. To further the purposes of this Act, the director shall have the power to:

(1) Accept grants-in-aid or outright grants;

(2) Contract for services;

(3) Enlist the aid of community organizations and private entities in information gathering and dissemination activities; and

(4) Hire on a contractual basis individuals from relevant fields, to include at least one environmental toxicologist.

The powers and duties provided in this Act are in addition to those assigned the director in section 341-4, Hawaii Revised Statutes.

(e) Rules. In conformity with and subject to chapter 91, Hawaii Revised Statutes, after consultation with the affected agencies the director shall make rules deemed necessary for or conducive to proper application and enforcement of this Act.

(f) Advisory committee. There shall be established a technical advisory committee on pesticides to assist and advise the office in carrying out the purposes of this Act. The committee shall be composed of the chairperson of the environmental council, one representative each from the department of agriculture, the department of health, the department of land and natural resources, the Honolulu board of water supply, and the University of Hawaii, and five at-large members representing a mixture of disciplines and including at least one member each from the U.S. military in Hawaii, the agricultural industry, an environmental organization, and a community organization. Members of the advisory committee other than the military representative shall be appointed by the governor in accordance with section 26-34, Hawaii Revised Statutes. The representative of the U.S. military shall be invited to serve without necessity of appointment by the governor. The committee shall be chaired by the director or the director's designated representative.

(g) Progress report. The office shall submit a report to the legislature prior to the convening of the regular session of 1986 on the progress of the office's actions and plans under this Act.

(h) Repeal date. This section is repealed effective June 30, 1987.

ACT 50

Unofficial Version

HOUSE OF REPRESENTATIVES
TWENTIETH LEGISLATURE, 2000
STATE OF HAWAII

H.B. NO, 2895 H.D.1

A BILL FOR AN ACT RELATING TO ENVIRONMENTAL IMPACT STATEMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that there is a need to clarify that the preparation of environmental assessments or environmental impact statements should identify and address effects on Hawai'i's culture, and traditional and customary rights.

The legislature also finds that native Hawaiian culture plays a vital role in preserving and advancing the unique quality of life and the "aloha spirit" in Hawaii. Articles IX and XII of the state constitution, other state laws, and the courts of the State impose on government agencies a duty to promote and protect cultural beliefs, practices, and resources of native Hawaiians as well as other ethnic groups.

Moreover, the past failure to require native Hawaiian cultural impact assessments has resulted in the loss and destruction of many important cultural resources and has interfered with the exercise of native Hawaiian culture. The legislature further finds that due consideration of the effects of human activities on native Hawaiian culture and the exercise thereof is necessary to ensure the continued existence, development, and exercise of native Hawaiian culture.

The purpose of this Act is to: (1) Require that environmental impact statements include the disclosure of the effects of a proposed action on the cultural practices of the community and State; and (2) Amend the definition of "significant effect" to include adverse effects on cultural practices.

SECTION 2. Section 343-2, Hawai'i Revised Statutes, is amended by amending the definitions of "environmental impact statement" or "statement" and "significant effect", to read as follows:

"Environmental impact statement" or "statement" means an informational document prepared in compliance with the rules adopted under section 343-6 and which discloses the environmental effects of a proposed action, effects of a proposed action on the economic [and] welfare, social welfare, and cultural practices of the community and State, effects of the economic activities arising out of the proposed action, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects.

The initial statement filed for public review shall be referred to as the draft statement and shall be distinguished from the final statement which is the document that has incorporated the public's comments and the responses to those comments. The final statement is the document that shall be evaluated for acceptability by the respective accepting authority.

"Significant effect" means the sum of effects on the quality of the environment, including actions that irrevocably commit a natural resource, curtail the range of beneficial uses of the environment, are contrary to the State's environmental policies or long-term environmental goals as established by law, or adversely affect the economic [or] welfare, social welfare[.], or cultural practices of the community and State."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

Approved by the Governor as Act 50 on April 26, 2000